Framing the hijab

The governance of intersecting religious, ethnic and gender differences in France, the Netherlands and Germany
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VRIJE UNIVERSITEIT

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Acknowledgments

Many people outside academia think that being a PhD student is a rather dull life. You only read books and sit behind your computer, so they say. While my friends will agree that sometimes I lived up according to the persistent image of an academic being a solitary bookworm, I also met plenty of people who are the living examples of the opposite.

To start with my supervisors. Having been able to work closely together with my promoter Sawitri Saharso in the VEIL project, I got to know her as a socially engaged and strong personality who combines her theoretical thinking with excellent management skills and memberships in several boards and editorials. Sawitri, you showed me how to think pragmatically, seize opportunities when they arise, and how to build networks without trying to please everyone. Thank you for your commitment as my supervisor, as well as for all the extensive talks we had about moral and political dilemmas which have helped me sharpen my own thoughts.

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Chapter 1. Introduction

“Forcing women to cover is a goal of fanatic Islamists who missionary their creed among us […] This turns the headscarf into a political symbol that cannot be tolerated for teachers […] Different from the headscarf, the Christian cross belongs to our Western culture, to our traditions, and symbolises here brotherly love, tolerance and maintenance of fundamental human values.” (Peter Windruff, deputy of the Social Democrat Party in Baden-Württemberg, Germany, extract from a parliamentary debate on the new school law, February 4, 2004). 1

“Can women freely don and remove headscarves, or is it an indispensible part of their identity? Many women perceive it like that. Then it is comparable to ethnicity, social class or sexuality and no Minister would ever ask a judge to privatise these characteristics. I object that the Minister forces women to distance themselves from something that is inalienable to them.” (Femke Halsema, deputy of the Green party in the Netherlands, extract from a parliamentary debate on religious symbols in the court, November 7, 2001).

“Need I remind you that in some countries in the 21st century, women cannot escape sanctions up to death penalties? In Iran, they are threatened with stoning, in Afghanistan with execution, in Bangladesh, to be burned with acid. In France, even if the reasons for wearing the headscarf are plenty, it remains the symbol and instrument of discrimination. To accept this challenge to the mixed school is to allow the exemption to certain educational rules (Annick Lepetit, deputy of the Socialist Party in France, extract of parliamentary debate on the new Secularism law in public schools, February 5, 2004).

In various European countries, public and political controversies have emerged, focusing on Islamic head and body covering. 2 As the above quotes illustrate, however, politicians from similar party families across countries can respond differently to the same issue, framing in fundamentally different ways the relation between state and religion, the roles of women, and the principles of equality and non-discrimination. This dissertation discusses the different ways in which French, Dutch and German politicians have deliberated the issue of Islamic head and body covering. But also within countries, politicians differ in the meanings they attribute to the phenomenon of veiling, and the related concepts of religion, secularism, gender, nationality and ethnicity, arriving at varying conclusions as to how to regulate Muslim women’s religious dress. In order to understand how fundamentally contested issues become implemented as policy, this dissertation offers a comparison of the changing institutional, historical and political contexts of France, the Netherlands and Germany.

The first debates about Muslim women’s dress emerged in the late 1980s, 30 years after the arrival of the first labour migrants and their families from Islamic countries in the 1960s. 3 Today, Europe’s 13 million Muslims constitute the continent’s second largest faith

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1 All translations from German, Dutch and French to English are mine.
2 Only in Southern European countries like Spain, Italy and Greece, female Islamic head and body covering has, so far, not become contentious. Only few debates occurred about the Turkish minority in Greece. See www.veil-project.eu.
3 It must be noted, however that Muslim minorities have already lived for centuries in the Balkans.
community, making up 3.5% of the overall population. The European Muslim community is characterised by a highly diverse mix of ethnicities, politics, languages and cultural traditions.\textsuperscript{4} In addition to France, where the headscarf has long been a contentious issue, the last decade has seen equivalent debates in the Netherlands, Germany, United Kingdom, Denmark and Austria. These debates occur at a time when economic globalisation, immigration and EU integration increasingly challenge nation-states’ control over their increasingly multicultural and multireligious citizenry.

The controversy about female Islamic head and body covering must therefore be situated within a wider context – that of European nation-states reconfiguring and reconsidering public institutions and cultural practices that once historically constituted the nation, but are increasingly perceived to be at risk in the present global context of increased multicultural and multireligious societies and the process of European unification and expansion. The changing demographic threatens the established notions of democracy and religion, public and private, freedom and equality, and people’s understandings of gender and sexuality. In this light, the debates about headscarves and face veils can be considered, as Christian Joppke (2009) already noted, a mirror of identity for European nation-states reconfiguring themselves.

The nature and object of the debate differs across Europe: in France and Turkey it has predominantly focused on students’ headscarves; German and Swiss debates centre on public school teachers; the Netherlands and the United Kingdom focus on the Islamic face cover. Also policies differ (see Skeje, 2007: 130 for three different policy regimes across Europe). This raises the question why Muslim women’s cultural dress has become, in varying degrees of intensity and timing, so controversial, and why countries have developed such differing policies to the same phenomenon.

It is sometimes suggested that, first, the visibility of headscarf-wearing women can explain the contentiousness of the issue or policy differences between countries, but numbers are not much helpful. A poll in the French \textit{Elle} magazine writes that 14\% of female French Muslims wear headscarves\textsuperscript{5} (other estimates are 2 or 3\%, see Gaspard & Khosrokhavar, 1995), meaning that despite the fierce national debate on the issue, only a small minority of Muslims actually wear headscarves. In Germany, where approximately 3.5 million people are Muslim, estimates are similarly low.\textsuperscript{6} This is in contrast to the Netherlands, where an estimated 25\% of young Dutch women of Turkish descent, and 40\% of young Dutch women of Moroccan descent, wear headscarves - in a country where 6

\textsuperscript{4} European Monitoring Centre on Racism and Xenophobia (2006), \textit{Muslims in the European Union. Discrimination and Islamophobia}. Because most Muslims in Europe have arrived as postcolonial or as labour and family migrants, statistics are based upon migrant’s ethnicity and nationality, and the number of Muslims in their country of origin. Throughout this dissertation, I will likewise refer to Muslims who are Islamic on grounds of ethnic descent or nationality, even though I realize that this says nothing about the extent to which they are practicing Muslims or identify with their religious beliefs. Moreover, Muslims include converted majorities but the debates studied in this research mostly focused on Muslims with an ethnic minority background.

\textsuperscript{5} ’Sondage exclusif: Intégration, voile et droits des femmes… Ce que veulent les musulmanes’, \textit{Elle} (December 15, 2003): 78-94. The poll did not taken into account ethnic, age or religious differences among Muslims.

\textsuperscript{6} ’Mit Kopftuch aussen vor?’ Schriften der Landesstelle für Gleichbehandlung- gegen Diskriminierung (2008). No exact numbers are known.
% of the population is of Muslim origin. Yet, the most accommodating policy measures remain in the Netherlands and, as subsequent Chapters will explore, this contrasts with the situation in France. The numbers not only fail to explain differences in policies, they do not match the intensity of the debate either: an estimated 0.02 % of the Dutch population (a few hundred women) wear Islamic face covers yet this type of dress has caught much public and political attention (Vermeulen, 2006: 13; Moors: 2009). In France, where the Parliament and Senate have accepted a ban that aims to prohibit face veils in public institutions, the number is estimated at less than two thousand (0.001 % of the population).

A second popular explanation is that restrictive policies emerge from the backlash against multiculturalism that has taken place in Europe. In 2006 67 % of the Dutch population believed there was a clash between Dutch culture and Islam, particularly concerning gender relations, and more than half of the Dutch population thought Islam constituted a threat to Dutch national identity. But so far, the changing public opinion in the Netherlands on Islam has not yet crystallised in anti-headscarf policies. The European Monitoring Centre on Racism and Xenophobia (EUMC) noted in 2006 a significant number of incidents in the Netherlands illustrating fear or prejudice towards Islam or Muslims. Those range from insults and threats to physical acts of violence and the setting of fire to mosques. Similar incidents occurred in France and Germany. Events like September 11 seem to be correlated with an increase in racist attacks against Muslims in the Netherlands, particularly the murder of the Dutch filmmaker and Islam critic Theo van Gogh by a radical Muslim in November 2004.

Yet, headscarf policies have so far still been far more accommodating in the Netherlands than in France and Germany. France prohibits all signs that ‘ostensibly’ show pupils’ religious affiliation in public schools, as well as the religious display by teachers and other public officers. Half of Germany’s sixteen federal states prohibit teachers’ headscarves, with five federal states making exceptions for Christian and Jewish religious

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7 SCP jaarrapport 2007: 268-274, partly based on Survey Integratie Minderheden (SIM) 2006. A telephone poll executed in France, the Netherlands and Germany among Turkish migrants of the first and second generation likewise suggests that in the Netherlands the largest number of Turkish Muslim women cover: 50 percent of female Sunnite respondents in the Netherlands wear headscarves, compared to 40 percent in France and 30 percent in Germany (Ersanilli, 2010: 58).

8 A research executed by the French Minister of Interior Affairs between August and December 2009 estimated that 1900 women in France wear the face veil, among whom 270 living in its overseas territories. Most were living in (poorer districts of) cities in the region Ile-de-de France. An no. 2262, Gerin, A. & Raoult, E., Rapport d’information au nom de mission d’information sur la pratique du port du voile intégral sur le territoire national (January 26, 2010).


dress and symbols. The Netherlands largely tolerate headscarves for pupils, teachers and public servants except in the police force and for court personnel. Even though a negative public opinion on Islam unquestionably creates more space for populist parties to call for the restriction of the ‘Islamisation’ of public space, country differences remain in actual policies concerning Muslim women’s religious dress. The question is also still open why this debate focuses on the headscarf and face covers. Why are other Islamic practices, like Muslim men’s beards or dress, not so contentious and subject to regulation?

Throughout this dissertation, I will use ‘hijab’ as an umbrella term for different styles of Muslim women’s dress, and use ‘veiling’ as a verb for different practices of female Islamic head- and body-covering.\(^\text{12}\) When necessary, I will differentiate between the ‘headscarf’, which covers (parts of) the hair and neck, and the ‘face veil’. Face veils both include both the burqa (a loose garment that covers the whole female body including a grid before the eyes) and the niqab (a face veil that likewise covers part of the face but still leaves the eyes visible).\(^\text{13}\)

In order to explain differences between the policies developed in France, the Netherlands and Germany, this research builds upon a wide range of empirical studies on the hijab that have tried to explain policy debates.\(^\text{14}\) Most headscarf research consists of single country studies, focusing on Germany (Altinordu, 2004; Berghahn, 2008; Fogel, 2007; Mahlmann, 2003), the United Kingdom (Davies, 2005), Belgium (Coene &

\(^{12}\) The word ‘hijab’ in Arabic means ‘curtain’ and should not be equated with the headscarf, which is translated as ‘khimar’. There are two parts of the Quran where the word hijab is related to female dress, but different theological interpretations exist whether these parts must be interpreted as an obligation to cover parts of the female body. In addition to Surah 33, verse 59 where the Prophet is commanded to tell his wives to make their outer garments to hang low on them so as not to be recognised and insulted, another quranic texts that is often referred to is Surah 22, verse 31. It reads: ‘And say to believing women that they should lower their gaze and guard their modesty; that they should not display their beauty and ornaments except what (must) ordinarily appear thereof; that they should draw their veils over their bosoms and not display their beauty except to their husbands, their father […] their sons […] their brothers. Or their women.’ (quoted from McGoldrick, 2006, originally from A Yusuf Ali (1983), The Quran – Text, Translation and Commentary (Maryland: Amana Corporation): 904-5). See for feminist readings of those parts of the Quran: Badran, 2008; Barlas, 1997; Göle, 1997; Mernissi, 1997; Wadud: 1999.

\(^{13}\) I do not intend to deny the variety in styles of dress, in motivations to wear it, the meaning it may carry in different times and contexts, nor the contestability of the practice as a religious duty (see: El Guindi, 1999; Oestrich, 2004; Gaspard & Khosrokhavar 1995; Karakasoglu, 2000; Klinkhammer 2000; Killian 2003; Boubekeur 2004).

\(^{14}\) I only discuss here empirical studies that have focused on explaining public policies in a West-European postcolonial context. Other studies on the hijab issue in present-day Europe have focused on the construction of gender, race and religion in national public and political debates and how this enables and constrains certain subjectivities (Duits & van Zoonen, 2006; Cesari 2006; Geisser, 2003; Karakasoglu, 2000; Lutz, 1996; Nieuwkerk van, 2004; Nordmann, 2008; Rocheford, 2002). Without systematically analysing who was involved in constructing dominant meanings of the hijab, how such meanings were contested and fragmented in counter discourses, or changed over time, these works tend to overlook the internal dynamics and heterogeneity of country’s discourses on the hijab (but see Lorcerie, 2005; Oestrich, 2004; Tevanian, 2005). A second stream of research exists of ethno-graphic studies of Muslim women’s own motivations to wear the hijab (Bartels, 2005; Boubekeur 2004; Franks, 2000; Gaspard & Khosrokhavar 1995; Jessen & von Wilamowitz-Moellendorff, 2006; Klinkhammer 2000; Killian 2003). See for the hijab question in colonial and postcolonial North African countries and Turkey: Ahmed, 1992; Arat, 2005; El Guindi, 1999; Göle, 1997; Mernissi, 1991.
Longman, 2008; Longman, 2003), the Netherlands (Loenen 2001; 2006a; 2006b; Saharso, 2003; Saharso & Verhaar, 2006; Verhaar & Saharso, 2004), or France (Bowen, 2007a; Dot-Pouillard, 2006; Ezekiel, 2006; Labourde, 2005, 2006; 2008; Lorcerie, 2005, 2008; Scott, 2005; 2007; Thomas, 2006). These works have greatly enhanced our understanding of the controversy, illustrating that the construction of the hijab as a political problem is a power struggle over meaning. From this research, it also appears that meaning-making struggles are shaped by nationally specific (but contested and changing) political histories and institutions of gendered and ethnicised citizenship and state-church relations. Because these single country studies are not comparative in nature, however, they are unable to show which assumptions were taken for granted in one country that are not so obvious for actors in other countries. Or, conversely, which similar meanings may have shaped the debates despite different national political histories and despite different policy outcomes.

Most comparative studies on the headscarf issue have explained countries’ different policies and jurisprudence, without systematically scrutinising and comparing the discursive politics which shaped the policy-formation process within their institutional settings (Brems, 2006; McGoldrick, 2006; Molokov-Liederman, 2000; Shadid & van Koningsveld, 2005). Some sociological studies do exist that focus on comparing policy discourses, such as between Germany and France (Amir-Moazami, 2007; Joppke, 2009; Kastoryano, 2006), France and the Netherlands (Reysoo, 1992; Coppes, 1994; Kuijeren, 2001), France and/or Germany and the United Kingdom (Amiraux, 2003; 2007; Liederman, 2000; Poulter, 1997) or the Netherlands and Germany (Saharso, 2007). Those studies have shown a relation between national political histories and the particular framing of the issue. But because they do not systematically compare the policy-making process, it remains unclear how national institutions and policies shape policy debates and outcomes.

This dissertation seeks to further examine this link between countries’ different political histories and institutions and the policy-making process around the hijab. Policymaking is understood here broadly as a process of converting social reality into policy-related issues that governors need and can act upon, and convincing others of one’s representation of reality. In the words of Maarten Hajer (1995: 15): “policymaking is in fact to be analysed as the creation of problems, that is to say, policymaking can be analysed as a set of practices that are meant to process fragmented and contradictory statements to be able to create the sort of problems that institutions can handle and for which solutions can be found. Hence policies are not only devised to solve problems, problems also have to be devised to be able to create policies”.

In order to explain policies on the hijab, this dissertation therefore analyses the ways in which the hijab was framed in the political realm as a paradigmatic symbol of problems requiring a policy response, understood here as all rules or law-like regulations communicated by governments following policy deliberations in the legislature, courts and other public arenas. Government refers to the agencies of highest public authority and decision-making, in France and the Netherlands at the national level and in Germany also at the level of the federal states, from here: Länder. Policy responses comprise court decisions, laws and regulations, executive orders, clothing directives or guidelines, or official declarations of authorities. They also include authoritative declarations not to act (‘policy silences’) (Weldon, 2002: 11).^{15}

^{15} Note that this dissertation does not analyse the actual implementation and evaluation of policies.
Yet, these meaning-making struggles do not occur in a vacuum. As the opening citations illustrate, politicians of parties with similar socio-democratic ideologies may interpret the hijab differently, reaching different conclusions about how to respond to it. By drawing on different traditions of citizenship and state-church relations, parties and actors can attribute different meanings to principles such as state neutrality, and to values such as religious freedom or equality. Also within countries, actors may differ in the definitions they give to the problem of the hijab and the solutions they suggest. While some framings of the issue may not lead to much controversy in a country where the hijab is easily accommodated, they may fundamentally challenge another society’s institutional histories and power relations. In other words, whether or not the hijab becomes a contentious issue depends on the different meanings that actors attribute to this dress form and to what extent such meanings challenge the existing institutions, cleavages and relations of power of that particular country.

The central thesis of this dissertation is that national institutional and policy histories offer specific opportunities and constraints, which shape how issues are constructed as problems within the political realm, giving rise to particular policy solutions. However, going beyond static, structural approaches towards understanding countries’ different policy outcomes, this dissertation takes a political-process approach that focuses on the actors involved in those framing contests, the shifting power they have to push for their construction of reality, and the legal-institutional setting in which these policy-formation processes take place. This dissertation focuses on three institutional settings as particularly relevant structures in shaping policy processes on the hijab: institutionalised state-church relations, institutions of citizenship and migrant incorporation, and gender machineries and policies, as well as their underlying cleavages. These three institutional settings, understood as internally heterogeneous, instable and contested, are considered to be of particular relevance to debates on the hijab issue. Because veiling is a religious practice brought to Europe through migration, it is subject to countries’ national cleavages, ideas on, and regulation of, first, religion and, second, immigrant incorporation. Third, because veiling is a contested religious duty that only applies to women, it is also subject to countries’ cleavages, institutions and policy legacies of regulating gender relations and women’s emancipation.

In order to scrutinise the effects of countries’ cleavages, institutional structures and policy legacies, and power constellations on policy-making processes on the hijab, this dissertation builds on a comparative framework. It systematically compares the parliamentary debates on the hijab in France, Germany and the Netherlands. These three countries are all members of the European Union, are all social-welfare states, and all have a substantial number of Muslims among their citizenries with different ethnic, national and migration backgrounds.16

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16 In 2000, the High Council for Integration (HCI) estimated that 4.155.000 Muslims live in France, while current estimates are around the five million (6-8% of the total population). The HCI provided the following estimates for the distribution of Muslims by country of origin: 1.550.000 from Algeria; 1.000.000 from Morocco; 350.000 from Tunisia; 315.000 from Turkey; 250.000 from Sub-Saharan Africa; 100.000 from Asia; 40.000 French converts; and 100.000 from other regions. Haut Conseil à l’Intégration (2000), l’Islam dans la République. In the Netherlands, the majority of Dutch Muslims (estimated at 920.000 in 2004, 5,8 % of the total population) are of Turkish (320.000) or Moroccan (285.000) origin. A significant minority is of Surinamese origin (32.000) while other minorities comprise of Dutch converts (6000), or immigrants of Somalia, Iran
Apart from these similarities, sufficient variation exists between the three countries. As will be discussed in the theoretical Chapter, they have often been represented as ideal-typical examples of states that have practiced different integration policy models. France has often been discussed as a civic-universalist model; Germany as an ethno-cultural model; and the Netherlands as a multicultural model (Brubaker, 1992; Castles, 1995; Kastoryano, 2002; Koopmans et al., 2005). The policy legacies of the three countries regarding religion have likewise been contrasted, with France being presented as a secularist state-church model; Germany as a corporatist state-church model; and the Netherlands as a pillarised, accommodative model (Berghahn, 2007; Ferrari, 2002; Fetzer & Soper, 2005; Monsma & Soper, 2009). Also in regard to institutions and policy histories of gender equality, country differences have been observed, even though this incipient research field has not developed ideal-typical models (McBride & Mazur, 1995, 2010; McCammon et al., 2001; Ferree, 2008; Mazur, 2003; Mazur & Zwingel, 2003; Outshoorn & Kantola, 2007). The selection of these three countries for this comparative study will thus enable me to analyse to what extent differences in policy responses can be explained by the structuring effects of particular political histories of interpreting, institutionalising and governing religious, ethnic and gender differences on policy debates on the hijab.

The policy debates and policy responses will be analysed from the onset of the debates in each country (starting with the Netherlands in 1985) until 2007, a period that includes several important national and international events such as September 11, 2001. Such a comparison over time allows for an explanation that is sensitive to changes in policy debates and responses within countries and hence to possible trends of convergence between countries.

This thesis therefore aims to answer the following two research questions:

1. What differences and similarities exist in the framing and policy responses to the hijab in France, the Netherlands, and Germany and how have these developed over time from 1985 until 2007?
2. To what extent can institutional structures, divergent policy pasts of state-church relations, migrant incorporation and women’s emancipation, and shifting party constellations explain differences in the framing and regulation of the hijab?

The study uses similar data for all three countries: a qualitative frame analysis of all parliamentary documents on this issue, complemented with jurisprudence that shaped policy responses and media extracts.
Outline of the book
The book is structured as follows. In Chapter 2, I will elaborate on my theoretical framework and methodology. I will explain how I combine institutional theories of citizenship and migrant incorporation, and of state-church relations with a political-process approach focusing on framing and agency. I will also incorporate insights from comparative gender politics to analyse the gendered nature of state institutions, laws and policies, which may explain the different ways in which policy debates on the hijab were gendered. I will also explain the ways in which I collected the data for this research, and my specific methods of interpretative policy analysis: frame analysis.

The rest of the book is divided into two parts, each consisting of three chapters, and a conclusion. In the first Part, Chapters 3 to 6, I will compare the characteristics of each country’s general opportunity structures (Chapter 3), as well as the issue-specific opportunity structures of state-church relations (Chapter 4), citizenship and migrant incorporation policies (Chapter 5), and gender machineries and policies (Chapter 6). I have made this analytical differentiation between three institutional settings in order to discern to what extent they enable or constrain the framing, regulation and practice of the hijab as a religious, ethno-cultural or gender symbol and practice. In reality, these institutional regimes and policies intersect. Religion, ethnicity and gender cannot be seen as merely additive. Neither of them can be prioritised abstractly, because they are articulated by each other in concrete social relations and hence in policy discourses (Yuval-Davis, 1995: 8). Nonetheless, for analytical purposes, I have formulated separate hypotheses in each of these chapters for the impact of each issue-specific opportunity structure on the policy-making process in the three countries over time.

In the second Part, Chapters 7 to 9, I will analyse the politicisation of the hijab in France (Chapter 7), the Netherlands (Chapter 8) and Germany (Chapter 9) respectively, focusing on the actors involved, the framing of the issue and different and changing policy responses. The concluding section (Chapter 10) provides a comparative overview of differences and similarities found in the framing and responses to the hijab, and draws conclusions regarding the hypotheses advanced in Chapters 3 to 5. Here I will answer my main research question, namely, to what extent differences in policy debates and policy responses to the hijab can be explained by a country’s general and issue-specific opportunity structures. In this final chapter, I will also reflect upon the strength and weaknesses of my theoretical framework and give some suggestions for further research.
2.1 Introduction
In this chapter, I will discuss the literature that has informed the theoretical framework I have created to explain the differences in policy debates and policy outcomes on the hijab between France, the Netherlands and Germany. First, I have relied upon insights from comparative empirical sociology on immigrant integration and state-church relations. Scholars working within this neo-institutionalist tradition have developed several ideal-typical ‘regimes’ of citizenship and of state-church regulations. A ‘regime’ clusters countries based on their dominant institutional patterns and policy logics (Lister et al., 2007: 2). The literature has shown that country-specific state-church and citizenship regimes shape present-day policy responses to multicultural challenges, such as the hijab.

Nonetheless, since the hijab is not only about religious and ethno-cultural differences but also about gender differences, I have also incorporated insights from comparative gender policy studies to scrutinize the possible path-dependent effects of gender equality institutions and policies on policy responses to the hijab. Moreover, in order to explain differences within countries and changes over time in policy responses, I rely upon political-process theories to take into account the role of shifting power constellations and governmental structures on the policy-formation process, including framing theories that focus on the discursive ways in which actors negotiate with institutions to construct certain hijab policies.

This chapter is divided into three sections. In the first section, I will discuss the state-church and migrant incorporation regime literature, as well as the comparative gender literature that has informed my thinking on this issue (2.2). Secondly, I will present and elaborate upon the political-process model I use to explain national differences in policy debates and responses to the hijab (2.3). In the third section, I will discuss my research design and methods, elaborating upon the sources used and my particular methodology of analysing policy debates (2.4 to 2.6).

2.2 State responses to multicultural challenges
The ground-breaking work of Roger Brubaker (1992)\(^\text{17}\) has motivated the development of various ideal-typical ‘regimes’ or national models of citizenship and integration in an attempt to both map and explain countries’ different migrant integration policies (Alexander, 2001; Castells & Miller, 1993; Castels, 1995; Entzinger, 2000; Koopmans & Statham, 2000; Kastoryano, 2002; Koenig, 2003: 155ff). Although the terms used for the different policy regimes vary, as do the methods of classifying countries into groups, the

\(^{17}\) Brubaker (1992) compared citizenship policies for foreigners in France and Germany, establishing that the former had relatively open naturalisation rules while the latter easily granted citizenship only to people sharing the same ethnic origins. Brubaker argued that the differences between those two countries’ policies could be attributed to their particular paths of nation-building. Different conceptions of citizenship and belonging embedded in each country’s institutions and ways of thinking and talking about membership (‘cultural idioms’) would exert path-dependent effects on present-day migrant integration processes.
literature points to three different models that measure the degree to which countries grant immigrants access to equal citizenship, and the extent to which they accommodate cultural group difference (see Koopmans et al., 2005; Saharso, 2007).

France can be seen as a prototypical example of the *civic-assimilationist model*. Religious and cultural differences are not fostered. Immigrants born in French territory are easily granted citizenship rights based on the ‘ius-soli’ principle of birthright citizenship, though they are expected to accept common values and principles. Germany is often regarded as a prototypical example of the *ethno-cultural model*, where citizenship is based on the ‘ius sanguinis’ principle, meaning determined via the citizenship of one’s parents. Migrants who are not ‘ethnic’ Germans not only face high barriers to citizenship but are also pressured to adapt to the host culture. The Netherlands is conceptualised as exemplifying the *multicultural model* whereby immigrants can claim citizenship on grounds of the ius soli principle, but where they are also able to seek protection for specific “group rights” due to the country’s promotion of cultural and religious diversity. (Koopmans et al., 2005). This citizenship-regime theory suggests that because social reality is structured by pre-existing ideas about a nation’s self-understanding, the Netherlands would be more open to accommodating or institutionalizing claims of religious or cultural recognition, such as those related to the hijab, than would France and Germany. Moreover, due to the French emphasis on a shared Republican national identity that denies ethnic and racial differences, France would not seem likely to promote the proliferation any cultural differences, whereas Germany’s ethnonationalistic national self-understanding would lead it to foster only the cultural values and expressions of majority ethnic groups.

Recently, comparative research on countries’ responses to the religious needs and identities of immigrants has turned away from an exclusive focus on citizenship and integration policies and begun to examine institutional patterns of state-church relations. Because citizenship and integration policy models have primarily focused on immigrants’ political, social and civil rights and liberties, or subsumed religious claims of recognition in more general treatment of migrants’ ethno-cultural identities, they have tended to downplay the importance of the religious rights and demands of Muslim migrants. In this light, several models now group countries according to the relationship between religion and politics. Fetzer & Soper (2005: 16, 18) have argued, for instance, that state-church models function as “institutional and ideological resources for Muslim activists,” and that they “determine the types of religious demands that Muslims have proposed, the response of various actors to those needs, and the public policy that the states eventually adopted in the area of Muslim religious rights”.

Legal scholars often focus on the constitutional relationship between state and church (Berghahn, 2007; Ferrari, 2002). In this typology, France and the Netherlands are both categorised as ideal-typical examples of systems of separation that neither recognise a state church nor finance religious worship. Germany is considered an example of a corporatist or ‘concordatarian’ system, whereby state and church officially cooperate via specific legal provisions. Finally, there are countries with an established state church, such as the United Kingdom and Norway.

Sociological research has developed more complex state-church models that go beyond the formal legal status of religion to take into account underlying philosophical principles, governing traditions and historical policy legacies (Fetzer & Soper, 2005: 7;
Modood & Kastoryano, 2006; Koenig, 2003; Monsma & Soper, 2009: 10-11). In this realm of the literature, France is seen as a prototypical example of the strict church-state separation model, whereby state neutrality is assumed to be best achieved through a hands-off approach to religion: only when the state does not identify with any religion, abstaining from recognising and funding religious groups, can it guarantee each individual’s freedom of religion. The Netherlands figures as an ideal-typical example of the (structural) pluralist model, where state neutrality does not entail a strictly secular hands-off approach, but rather recognises and funds all religious and secular worldviews on an equal footing. Germany is typically characterised as an example of both the pluralist model and the (multiple and informal) established church model. Such states selectively recognize and cooperate with certain officially recognised religious communities, investing them with several state or public functions, disadvantaging non-established religions in the process.

This literature on the institutional structures of church-state relations leads us to expect that hijab-wearing women would experience more favourable treatment when they wear religious symbols in public in the Netherlands and Germany where the state recognises religious group manifestations in public space, rather than in France, where religious groups are expected to separate their faith from participation in public institutions.

Three different points of critique on ‘models’ or ‘regimes’ as explanations for country-specific policies:

Three insights from the criticism that has been applied to regime theories generally show why a more dynamic and even more issue-specific theoretical model is required in order to explain national differences in the politicisation and regulation of the hijab.

First, these theories run the risk of using overly simplistic images of national regimes, failing to take into account internal complexities and variations in policy. Integration policies may differ for various categories of migrants or for different domains (state, market, welfare and culture), and they can also change over time. Simplistic typologies that do not take into account this internal complexity are inadequate for the explanation of country differences in policy responses (Entzinger, 2000; Freeman, 2006). In a similar vein, countries’ state-church regimes have been recognised as internally heterogeneous and fairly ambiguous (Bader, 2007b; Bowen, 2007b; Maussen, 2009). John Bowen (2007b: 1004) has argued that national models are historical products consisting of “multiple lines of reasoning and emotions” that may be articulated in political struggles, thereby shaping policy outcomes. He thus suggests that scholars take into account the historical cleavages underlying internally complex models by considering institutions, policies and historical traditions as ‘cultural resources’ upon which actors may draw for political purposes. Rather than using crude models, this literature pleads for historically sensitive analyses of the confrontation between the modern nation-state and religious groups, the outcomes of which have resulted in particular national civic and political cultures that shape the relationship between the state and the individual without necessarily representing stable, homogenous and coherent policy regimes (see also Sengers & Sunier, 2010). Matthias Koenig (2007: 912) likewise encourages scholars to move “beyond the crude typologies of national ‘models’ by taking into account contradictory elements of institutional arrangements and their situation-specific interpretations.”
Second, models can also be seen as too deterministic and static, a point illustrated by their failure to predict the liberalisation of Germany’s citizenship policies, which now grant citizenship on grounds of the ius soli principle to children born of non-ethnic German parents. Roger Brubaker (1992:186) argued, for instance, that “France and Germany continue to define their citizenries in fundamentally different ways because they have been doing so for more than a century.” He wrongly concluded that “in Germany, there is no chance that the French system of jus soli will be adopted; the automatic transformation of immigrants into citizens remains unthinkable in Germany”. Dutch integration policies have also seen a shift away from multiculturalism, which is similarly hard to square with static categories of typological regimes. Related to this second point of critique is that national migration integration and state-church models are themselves subject to change, because of the increasing multi-level governance of citizenship and religion, and related processes such as (economic) globalisation and post-war immigration. In other words, when analysing countries’ institutional frameworks of citizenship and state-church relations, we must not only take into account internal heterogeneity but also shifts over time, as well as the influence of transnational opportunity structures on national policy-making.

Third, current models of citizenship and migrant integration have been criticised from a very different angle. Gender scholars have pointed out that models have mostly remained gender-blind (Lister et al., 2007; Munday, 2009; Siim & Squires, 2008). Various scholars have illustrated how the timing and nature of the acquisition of (civic, social-economic and political) citizenship rights varies between male and female migrants, due to the gendered nature of citizenship and the gendered character of migration processes themselves. Varied and changing gender roles for men and women, institutionalised in political and social institutions and cultural practices, have shaped the ways in which migrants can become citizens, reunite with their spouses, pass their nationality on to their children, access the labour market, claim social rights to welfare and healthcare, or seek asylum as they flee gender-specific persecution. While countries like Germany are generally seen as ideal-typical examples of a restrictive, ethnocultural citizenship regime, gender scholars have pointed out how citizenship laws were more lenient for foreign female spouses marrying native German men than for foreign male migrants, even as these women were simultaneously excluded from the labour market (Sainsbury, 2006). Similarly, until 1964 Dutch women who married foreign men automatically lost citizenship rights, while foreign women marrying Dutch men automatically obtained Dutch citizenship (Bonjour, 2009; Hart, 2003; van Walsum, 2008). This illustrates that culturally informed

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18 In this light, various scholars have questioned the relevance of the nation-state as the appropriate unit of analysis. Post-national scholars have argued, for instance, that international human rights regimes challenge the sovereignty of the nation state in defining the rights and duties of migrants (Soysal 1994, 2000; Sassen 1996; 2003). Migrants would subsequently increasingly benefit from anti-discrimination intervention by transnational and supranational institutions, such as the Council of Europe and its European Court of Human Rights (ECHR), or the European Union and its European Court of Justice (ECJ). Soysal (1994: 157) notes that this international human-rights regime functions as an important alternative opportunity structure for migrants to claim rights, even though she is aware that the actual exercise of universal rights is still tied to the nation-state where immigrants must claim their rights. Other scholars like Christian Joppke (2007) have rejected the idea that nation-states have lost sovereignty due to external, international developments and argue that the challenge comes from within, when domestic actors, particularly courts, would push the state to adhere to international human rights, leading to processes of convergence in immigrant integration policies.
family and gender roles, in which men are seen as the head of the household and women as followers of their husbands, have shaped - and continue to shape - citizenship and immigrant integration policies.

Since the hijab is worn by and prescribed only for women, we may expect that politicians deliberating and regulating this particular issue will be influenced by national ideologies, policy legacies and institutions regulating gender relations. Kathrin Zippel (2006: 6), for instance, speaks of country-specific gender ideologies - notions of sexuality and gender equality based on ‘gender difference’ or ‘gender sameness’ - as potential factors shaping the understandings of public issues and emerging policies. Other scholars working in comparative gender studies have drawn on the neo-institutionalist tradition by developing so-called ‘gender regimes’ that reflect and explain differences in the perceptions of women and men’s appropriate roles in society and related ‘public’ and ‘private’ spheres. Building upon Esping-Andersen’s classification of ‘welfare regimes’ (1990), traditional accounts of gender regimes have compared the extent to which countries’ family, tax and labour-market policies affect the typical treatment of women as housewives and men as breadwinners. A classical distinction is made between the ‘breadwinner’, ‘modified/weak male breadwinner’, and ‘dual-earner’ regimes (Lewis, 1992; Hobson, 2000; Jenson, 1997; Sainsbury, 1999; Knijn & Kremer, 1997; Pascall & Lewis, 2004). France, the Netherlands and Germany are often represented as moderate male-breadwinner models, with social and welfare policies granting benefits for women primarily in their roles as wives and mothers, though France has a longer record of advancing women’s full-time work than the other two countries.

Yet the critique that applies to migrant integration and state-church models also applies to gender models. Not only do such static gender regimes fail to account for changes in policies over time, they also downplay the diversity within countries’ gender policies and governing strategies. Due to the narrow focus on women’s roles as caregivers, most gender regime typologies fail to explain countries’ different (non-)responses to other claims of gender justice, such as those of body politics (Outshoorn, 2001), political representation (Jenson & Valiente, 2003), gender-based violence (Weldon, 2002), or sexual harassment (Zippel, 2006). Comparative gender research shows that path-dependent effects seem to correspond by policy sector more than by country, because states’ gender-equality policies and strategies likewise differ within the same country from one field to another and change over time (McBride & Mazur, 2010: 259). Additionally, states’ policies and governing strategies may differ from one group of women to another, by race or ethnicity, class, religion or sexuality (Brush, 2000). More complex typologies of gender regimes have therefore focused on different levels of policies, practices and institutions, accounting for their different conceptions of gender and gender relations, as well as the best strategy for advancing the status of women (Walby, 2004; 2007).\footnote{Sylvia Walby (2004; 2007) has developed a more complex typology of gender regime, studying the constitution of gender relations at various societal levels and in different sectors and domains. Her typology not only takes into account the regulation of the market and household, but also civil society (social movements, knowledge-institutions, media) and polity (states). She differentiates between domestic and public forms of gender regimes (and three trajectories of transition from a domestic to a public form: welfare-state led, regulatory-policy led and market-led), which may lead to different degrees of gender equality and different conceptualisations of ‘men’ and ‘women’, depending on the domain of analysis (politics, market, civil society, or family).} Such complex
gender regimes do not allow for straight-forward hypotheses concerning our expectations of countries’ policy patterns on the hijab.

In short, the literature suggests that policymaking around the hijab will be influenced by country-specific institutions of state-church, citizenship and integration, and gender, but that there is still much leeway for actors to change and depart from historical institutional patterns by referring to different, and possibly contradictory policy legacies when mobilising for policy alternatives. In fact, by emphasizing the path-dependent nature of top-down institutional structures, in which deep-seated ideas have paramount power, the regime literature tends to downplay the important role of actors’ agency in policy formation processes and the processes and mechanisms through which institutions are transformed into actual policy. Some scholars have shown how the ‘French republican’ or the ‘Dutch multiculturalist model’, more than describing social reality, is used by political actors as stereotypical and normative models to legitimise or discredit certain policies. Using simplistic models that insufficiently historicise the development, changes and contradiction of countries’ institutions therefore runs the risk of constructing highly idealised normative models that hinder empirical observation and obstruct policy learning across national borders (Bertossi, 2009; Duyvendak & Scholten, 2009; Entzinger, 2000; Favell, 1998; 2003).

Moreover, policy discourses about citizenship, the nation, and multiculturalism are often highly gendered, because women often function as symbolic ‘border guards’ and protectors of an imagined national, ethnic or religious community. Overlooking the gendered nature of institutions and cultures may fundamentally downplay their influence on present-day policy debates on immigrant integration where women find themselves caught in a ‘clash of civilizations’ rhetoric (Andreassen & Lettinga, 2011; Kofman, 2005; Longman, 2003; Lutz, 1996; Lutz, Phoenix & Yuval-Davis eds., 1995; Phillips, 2007; Yuval-Davis, 1997; Yuval Davis et al., 2005).

In order to understand the causal effect of institutions, Veit Bader (2007b: 879) therefore concludes with the suggestion that, even though we cannot do away with models, social scientists need to pay more attention to the actors involved in policy-formation processes and the ways in which they give competing meanings to institutional patterns. He argues “the task of social science is to describe and explain these predominant and oppositional normative institutional and policy models, their actual impact on policies, and their effect. This includes the analysis of the power relations between the different (coalitions of) actors constructing and using such models, or ‘discursive frames’-politicians, judges, philosophers, and social scientists as public intellectuals, journalists etc.- and their impact on public discourse.[…] Indeed, established or institutionalised patterns, like principles and rights (of religious freedoms, for example) have been and have to be continuously re-interpreted and re-framed, and framing depends on competing discourses of incorporation, on discourse coalitions and power relations, and on crucial events” (2007: 879).

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Veit Bader (2007b: 879) argues against the static nature of the current citizenship and state-church model, but also notes that we cannot do away with them, because “historical and comparative research is in need of explicitly constructed typologies” to “help to reduce this (unstructured) complexity (of the relationships, dimensions and indicators) in a controlled and reflexive way”.

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2.3 A political-process approach to explain policy responses to the hijab

Building further upon this suggestion to study the impact of previously implemented laws and policies on today’s policy outcomes by analysing how actors actually use institutions (referring to both public policies and political institutions: Hall & Taylor, 1996), this study adopts a political-process approach to explain policy responses to the hijab in France, the Netherlands and Germany.

The political-process approach considers policy responses as the outcome of a dynamic process of policy formation, unfolding over time and involving interactions between several actors in competition with each other over the course of action. In order to capture the political context in which such political struggles and dynamics occur, social movement scholars have developed the concept of ‘Political Opportunity Structure’ (POS), referring to the ‘consistent – but not necessarily permanent – dimensions of the political environment that produce incentive for collective action by affecting people’s expectations for success or failure’ (Tarrow, 1998: 77). The concept has mainly been used to explain country differences in the frequency, timing and nature of social movement mobilisation, and the success these movements have in influencing policies. The basic idea is that the capacity of ‘outsiders’ or ‘challengers’ to the state to mobilise and influence policy outcomes is both enabled and constrained by their structural institutional and political context, the POS.

Descriptions of the POS differ between scholars. Kriesi et al. (1995) discern four general aspects of the political context that shape political contention, and which particularly affect social movement strategies, levels of mobilisation, and outcomes of mobilisation processes. These include:

- **national cleavage structures** within a polity (also called conflict structures, Koopmans, 1995: 14). These are historical fault lines along which socio-political conflicts have evolved, and may continue to evolve if cleavages are politicised. Kriesi et al. derive the term ‘cleavages’ from Stein Rokkan. He characterized cleavages as particularly strong and long-standing conflicts that have emerged out of state-formation and nation-building processes and the industrial revolution. These conflicts directly shaped today’s party systems through their transformation into political parties that continue to mobilise to defend interests and identities related to the conflict, subsequently structuring present-day politics (Lipset & Rokkan, 1967; Flora, Kuhnle & Urwin, 1999). The three traditional cleavages of Rokkan that Kriesi et al. examine in their conceptualisation of the POS are conflicts between centre and periphery, state and church, and capital and labour.

- **formal institutional structures**. These are the formal, institutional aspects of the state that determine its capacity to implement policies, and its openness to outsiders to influence key decision-makers. Kriesi et al. (1995) discern several general formal institutional characteristics of the political system, such as the degree of centralism or federalism of a state, its electoral system, and the balance of power between the judiciary, government and legislative arms of the state. Joyce Outshoorn (2000) also includes here the formal rules, laws and constitution of a state.

- **informal procedures and prevailing strategies** of elites. Kriesi et al. (1995) differentiate between more exclusive and more inclusive strategies that governments may employ towards non-governmental actors mobilising for change.
• shifting configurations of power between and within parties. This last dimension refers to fluctuating aspects of the political context, such as electoral shifts in ruling alignments, intra-elite divisions, and the availability of influential allies who can help outsiders push for their desired reforms.

Kriesi et al.’s four dimensions of the POS are a set of independent variables that allow for an analysis of the particular political and institutional environment that shapes the dynamic political struggles between actors as well as the policy output of these political conflicts. In addition to institutional characteristics, governing strategies and historical cleavages, it also allows for an analysis of the influence of (shifting) power constellations on actors’ opportunities to push for certain policies. Although the POS concept has mainly been used to explain the mobilisation of protest ‘outside’ state institutions and the success of such social movements to push for policy reform, I will use it to explain the dynamic political conflict over the hijab between different actors ‘inside’ the state (see also Hafner-Burton & Pollack, 2000; Roggeband & Verloo, 2006).

In particular, I will use it to explain the timing and contentiousness of the politicisation of the hijab in the national (and Germany also federal) parliaments, as well as the nature of the resulting policies. Even though I recognise that state actors may be influenced by the mobilisation of ‘outsiders’ (and therefore I will pay some attention to the role of non-governmental actors in policy debates on the hijab), the focus of this study lies in explaining the politicisation of the hijab by ‘insiders’ within French, German and Dutch state institutions, namely politicians. In France and the Netherlands, which are centrally organised states, I focus on the policy responses taken by the national government and the debates in parliaments preceding the implementation of these responses. In Germany, which is a decentralised polity, I focus on the action taken by governments at the Länder level in response to policy debates in their respective legislatures, interacting with the actions of courts and other state institutions. Since the Länder have autonomy over educational and cultural policies, they decide the rules governing the hijab in public institutions, subject to nationally binding constitutional rights.

While I draw heavily on the framework of Kriesi et al. (1995) I have had to amend it for purposes of this study for two primary reasons. The first is that the four elements of their POS are too general to explain the specific political dynamics on the issue of the hijab. General institutional characteristics of the political system may explain, for example, why different allocations of power gave one government more capacity to implement headscarf policies than another. However, they do not explain why the hijab is more likely to become controversial in one country than another in the first instance, or why certain hijab policies are more widely accepted in one country than another.

We therefore need a more refined theoretical model that includes the specific cleavages, rules, laws and governing strategies that matter for the mobilisation around the issue of the hijab. The literature discussed above suggests that the three countries’

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21 My use of the words ‘insiders’ and ‘outsiders’ has been placed between brackets, because the differentiation between ‘insiders’ and ‘outsiders’ of the state can be challenged if one considers the state as a highly diversified actor that likewise consists of insiders/elites who dominate political discourses and outsiders/challengers/opponents thereoff. Moreover, actors within the state may even be part of ‘outside’ movements, such as femocrats working within the state (single bureaucrats and decision-makers who promote feminist ideas, actors, and demands) who are part of the larger women’s movement (see also: Chappel, 2006).
internally heterogeneous and changing state-church regimes, migrant incorporation regimes and gender regimes can be considered ‘issue-specific’ political opportunity structures that circumscribe actors’ chances to politicise issues like the hijab and shape their strategies. In this light, I will conceptualise the second and third elements of Kriesi’s POS as the institutions and strategies that states have developed over time to govern religious, ethno cultural and gender differences, as well as their underlying historical cleavages. In other words, I will not make the analytical distinction between the ‘formal’ institutional characteristics and the ‘informal’ elite strategies that Kriesi et al. (1995) discern in their conceptualisation of the political opportunity structure. Not only is it prohibitively difficult to disentangle formal laws from informal governing strategies, but such an analytical distinction also wrongly suggests that laws and policies can be separated from informal logics, norms and values.22

A second, related, reason why the theoretical model of Kriesi et al. needs amending is that they downplay an important aspect of policy-formation processes: the role of ideas and frames. Policy formation is not only a political struggle between interest-seeking actors mobilizing in response to their (changing) political and institutional environment. It is also a discursive struggle between actors who construct and compete over the problem for which particular policies must be designed. Before determining what their interests and goals are, actors must first agree upon the issue at stake. And before authorities can create policy responses, actors must first convert social reality into a political problem.

‘Framing’ describes this process of constructing, adapting and negotiating frames (Triandafyllidou & Fotiou, 1998), a term that is familiar to both public policy analysts and social movement scholars (Béland, 2009). Since my research compares parliamentary debates on the hijab that primarily involve policy makers, I will stick to the definition of Rein and Schön (2003: 146). They identify a policy frame as ‘a way of selecting, organising, interpreting, and making sense of a complex reality to provide guideposts for

22 For this reason, I also do not use the heuristic concept of ‘discursive opportunity structure’ (DOS). This concept was developed by Koopmans and Statham (1999), who studied and compared public claims made in the mass media regarding immigrant integration in six European countries, in an attempt to capture the cultural meanings and values underlying states’ policies regarding citizenship and immigrant integration. It was further developed by Ferree et al. (2002) who studied the framing of abortion in printed media in the United States and Germany. The concept refers to the meaning-making practices and institutionalised discourses that reflect dominant values, belief systems, images of a society (Ferree et al., 2002; Ferree, 2003; Koopmans & Olzak, 2004; Koopmans & Statham, 1999). Discursive opportunities are often juxtaposed with institutional opportunities, such as the (electoral or party) state system, laws and regulations. I will not make an analytical distinction between institutional and discursive opportunity structures. First, this is because the separation between, on the one hand, institutions or policies, and, on the other hand, discourses, (cultural) norms and values, is not easily drawn. The analytical distinction can therefore appear rather artificial and may result in a weak operationalisation of DOS. Second, I consider the concept problematic because it may lead to tautological explanations. The dependent variable that I seek to explain consists of (competing) policy frames and policy responses on the hijab, rather than the (discursive) strategies used by social movements to influence policy outcomes. The framing of the hijab as a political problem by policy elites can be seen as a (more volatile and short-lived) component of the discursive opportunity structure, with the result that policy frames will serve as both a dependent and an independent variable. For this reason, I stick to the more general concept of Political Opportunity Structure, operationalised here as policies and governing strategies, including underlying ideas and values, as well as cleavage structures and power constellations.
knowing, analysing persuading, and acting.²³ As cognitive structures, policy frames help actors to define the problem to be solved, and identify the solution. They influence what type of information is gathered by policy makers and how to weigh each piece of information. As normative structures, policy frames satisfy policy makers that their reforms serve the underlying values of the polity they envisage. They help actors define what is just and what is wrong, and they may allot authority to certain actors speaking for a cause (Bleich, 2003, 26-29). In addition, Deborah Stone (1989: 295) identifies four important political functions that frames may play for political actors: 1) to challenge or protect social order, 2) to identify causal agents responsible for the problem, 3) to legitimate and empower problem “fixers”, 4) to create new political alliances. Policy frames, whether used strategically and deliberately or not, thus help allocate authority to certain actors while discrediting others.

Consequently, a political process is best conceived as a framing contest about the correct interpretation of the issue at stake. This contest takes place in the interaction between several actors, within and outside the state, all pushing for their version of reality to be translated into policy and governing practice. Policies can therefore also be understood as the outcomes of discursive politics, where some actors, having successfully allied around a particular frame, can accordingly formulate policy proposals and act upon social reality. In this way, consolidated policy frames give direction to policy making and help explain policy outcomes (Bacchi, 2005; Hajer, 1995). The political opportunity framework developed by Kriesi et al. (1995) will therefore be complemented with an ideational perspective that scrutinizes the influence of frames on policy outcomes.

How are institutions of state-church relations, immigrant integration and gender equality related to the emergence and development of policy frames around the hijab? The regime literature suggests that institutions, once established, structure and constrain political action and policy decisions, by exerting “path-dependent effects” on policy-making procedures (Pierson, 2000; Mahoney, 2000; van Waarden, 1995). Policy decisions made by earlier generations create institutions that reinforce themselves and shape policies and ideas for future generations, because institutionalised policy fields have generated a practice of thinking about and acting upon certain social phenomena without due consideration. In the words of James March and Johan Olsen (1989: 160), institutions “guide human interactions via a ‘logic of appropriateness’, meaning that they encourage human beings and organisations to associate new situations to situations for which rules already exist and to do what is ‘appropriate’.” Institutional logics subsequently define ‘what is discussable, what is realistic, what is natural, without the recognition of the arbitrary foundations on which these judgments are based’ (Laws & Rein, 2003: 179). Although these logics are not invincible, they are difficult to change because institutions generate actors ‘who embody

²³ There are many competing definitions and interpretations of the concept of frame, changing according to the discipline. In this study, I will focus on policy frames rather than ‘media frames’ and ‘collective action frames’. Originally, the term frame stems from social psychology, where it was used to denote the ‘schemata of interpretation’ through which individuals perceived the world’. As Erving Goffman wrote, a frame involves a cognitive framework, ‘that governs the subjective meaning we assign to social events’. Goffman argued that framing is the response to the problems encountered in everyday life by everyday citizens seeking to order, perceive and make sense of the world they inhabit: Goffman, E. (1974). Frame Analysis: An essay on the organization of experience. Cambridge: Harvard University Press: 10, 11, 21.
and reflect existing norms and beliefs’ and who will resist change (Chappell, 2006: 225). Because institutions guide actors’ perceptions of new situations by filtering out those aspects that risk destabilising the institutional framework and existing power relations, they tend to favour the policy frames that are in line with those that are anchored in laws and policies (Schmidt, 2008).

But actors do not just passively reproduce these frames. They may also decide to exploit institutions for their own ends, framing laws and norms in ways that fit their aims, but which may stretch prevailing institutional logics (Chappell, 2000). In fact, when mobilising for change, actors must refer to traditional representations of social reality in order to make their frames resonate (Beland, 2009). In doing so, however, actors can create new opportunities through which to pursue their aims or circumvent legal constraints. Social movement scholars like Benford and Snow, for instance, have found that actors strategically frame a problem so that the solutions they propose prevail because they resonate with the wider culture and values of the actors they influence. In other words, actors can try to make their frames ‘fit’ the institutions within which elites operate and others they are trying to influence (Snow & Benford, 1992: 137). Furthermore, in addition to reframing institutional patterns in ways that fit their aims, people may also choose for frames that do not resonate with existing institutional logics because they do not want to reproduce them (Ferree, 2003). In the words of Vivien Schmidt (2008: 316), “the deliberative nature of discourse allows them to conceive of and talk about institutions as objects at a distance, and to dissociate themselves from them even as they continue to use them”.

In short, pre-existing laws or policies institutionalise certain ways of thinking and shape actors’ understandings of issues, but they can also be used strategically as normative and ideological resources to push for policy reforms that actually help construct these very same institutions. This requires a more dynamic theoretical model that also takes into consideration the actual uses, negotiations and contestations of ‘models’ by political actors, and the feedback effects of such discursive struggles on institutional patterns and governing strategies of state-church relations, immigrant integration, and gender equality. These adjustments of the political opportunity model of Kriesi et al. (taking into account issue-specific aspects of the POS, combining the formal and informal aspects of the POS, and incorporating the role of frames on policy outcomes and their feed-back effects) lead to the theoretical model displayed in Figure 1, which I will use as a road map for further analysis.

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24 Snow & Benford (1992: 137) have suggested several frame alignment processes through which (policy) actors may try to link their understandings of the issue to greater concerns in order to convince others: 1) frame amplification: invigorating values or beliefs central to a society’s cultural repertoire (or cleavage structure). Even when a value is taken for granted, actors may revive it by idealising and elevating it as essential and timeless; 2) frame extension: adding certain issues or dimensions to a frame that hitherto were of no relevance to it; 3) frame bridging: the linking of one frame to another, ideologically congruent but unconnected frame; and 4) frame transformation: changing old meanings and understandings of a frame. Because the primary aim of this research was to explain cross-national differences, and only secondary to explain policy changes within countries, I have not analyzed and compared actors’ framing strategies in a systematic way, and will therefore not further elaborate upon these framing strategies here.
Figure 1 Theoretical Model: POS shaping policy responses to the hijab

Based on this model, I expect the three general and issue-specific elements of the political opportunity structures (cleavages, public policies and political institutions, and party constellations) to influence the framing contest in Parliament (Arrow 1) and subsequent policy responses (Arrow 2), with frames forming an intervening variable (Arrow 3). Parliamentary debates themselves are expected to reflect the framing contests that take place in other forums that make up the public sphere, such as the mass media, courts, scientific congresses, street demonstrations, and meetings of organisations (Ferree et al., 2002: 10). Although I expect an influence of these domains on the parliamentary debate on the hijab, they have not been included in the model (but see: Kleinnijenhuis, 2003; Roggeband & Vliegenthart, 2007 for an analysis of the mutual influence between parliamentary and media debates). The model does account for the fact that framing may be influenced by non-structural elements of actors’ environments, most notably political and historical events, which may open a window of opportunity for other actors to push for certain policy frames. Situational factors that are expected to influence framing processes on the hijab include the terrorist attacks of September 11th 2001, national political events, and broader trends and conjunctures like immigration processes or shifts in public opinion.

25 The model also leaves out the transnational influence that may be expected to come from international institutions, laws and jurisprudence. I will come back to the possible ways in which transnational opportunity structures like the EU influence national policy debates in the concluding chapter.
(Maussen, 2009: 38). I will now elaborate upon the ways in which the three elements of the political opportunity structure are expected to influence actual policy responses to the hijab, by shaping the framing of the parliamentary debate.

1) National cleavages
We may expect that the hijab issue will capture much public and political attention once framed in terms of historical cleavage structures, because political parties and others will mobilise for the goals that relate to their particular cleavage. Cleavages are important in structuring political debates when they are still salient in a country and when they are still closed. ‘Salient’ means that the conflict is still important relative to other divides, while ‘closed’ means that the collective identities of parties, social movements and interest groups that belong to one side of the cleavage are fairly stable (Bornschier, 2010: 66). To the extent that traditional cleavages are still salient and fragment the population into mutually conscious adversarial groups, there is little space for actors to frame the issue in terms other than these of the cleavage structure, making the issue contentious. If cleavages have been pacified and have opened up, it is less likely that traditional fault lines will break open, because political actors will find it less necessary to speak out on issues that have already been settled (Kriesi et al., 1995; Kriesi, 2007).

In addition to religious cleavages, two other cleavages are particularly relevant to the issue of the hijab. Historical cleavages over national identity shape the debate because the hijab is mostly worn by (descendants) of immigrants, and thus concerns issues of integrating ethnic migrant minorities into the national community. The ways in which historical conflicts over national identity have been dealt with, and the extent to which such cleavages are still salient and open, are expected to shape present-day controversies over the hijab. Furthermore, we may expect historical cleavages about gender relations and sexuality - issues intrinsically related to contested constructions of the nation and to conflicts about the place of religion in society - to shape political contention over the hijab. It may be argued that it is difficult to speak about a cleavage ‘structure’ in regard to sex and gender, because political parties have not organised on grounds of clear-cut gender identities to attract votes, which would be expected under the Rokkan definition of a cleavage structure. Nonetheless, attitudes towards gender – and sexuality - do shape public policy (Lane & Ersson, 2006), and political parties and interest groups differ in this regard, with some defending the equal rights of women as individual citizens and others seeing women mainly as mothers. In this light, I will also consider historical conflicts and mobilisation around gender and sexuality as a cleavage structure. In short, national cleavage structures over religion, nationality and gender are expected to shape attention for, and contentiousness towards, the hijab issue in the national parliaments (arrow 1).

2) General institutional structures of the state and issue-specific institutions regulating state-church relations, immigrant integration and gender
Formal state characteristics discerned by Kriesi et al. are expected to structure policy-formation processes in several ways. First, whether a country is a centralised or federal polity determines which level of the state has authority over regulations on the hijab, hence at which level policy debates and decisions take place. Second, differences in the nature and strength of the judicial arm of the state relative to the legislative and executive branches shape the capacity of the government to act upon policy frames; policy decisions may be
halted or overruled by the judiciary if courts have that power and find the decisions in conflict with existing law (Ferree et al., 2002: 15-16). Third, multiparty systems constrain government action more than bipolar party systems, due to the need to forge consensus between coalition partners. The result is that even if politicians win the battle of words within the parliament, intra-cabinet conflicts or court-decisions may impede the implementation of policy frames. General features of the political system are therefore expected to influence parliamentary debates (Arrow 1) but may also directly impact policy responses, when courts have the power to block policy reforms that resulted from the framing contest in parliament (Arrow 2 in Figure 1).

In addition to general state characteristics, issue-specific laws, policies and governing strategies (‘regimes’) regulating state-church relations, migrant incorporation and gender equality can be expected to shape the framing of policy debates on the hijab. First, they structurally favour certain policy alternatives that ‘fit’ with prevailing institutional logics (Arrow 1 in Figure 1). If certain policy proposals conflict with institutionalised principles, they may not be seen as legitimate. Myra Marx Ferree (2003: 305) therefore argues that ‘the use of non-resonant frames is by definition radical’. Conversely, frames that link with institutionalized ways of thinking will find much cultural resonance, expedient for the purpose of influencing policy yet simultaneously discrediting marginalized interests and needs that do not benefit from maintaining existing policy debates, laws and institutional patterns. Just which frames are radical and which are resonant depends on the particular institutional context and may differ between countries.

Second, institutional repertoires of state-church relations and policy paradigms of migrant incorporation and women’s emancipation are expected to shape policy debates on the hijab by enabling or constraining certain non-governmental actors’ access to policy decision-making arenas. Research on ‘comparative state feminism’ has, for instance, drawn attention to so-called ‘women’s policy machineries’ as important institutions that create access for women’s movements to influence policy debates and policy decisions regarding gender (McBride & Mazur, 1995; McBride & Mazur, 2010; MacCammon et al., 2001; Ferree, 2008; Outshoorn & Kantola, 2007). Such machineries refer to “any structure established by governments with its main purpose being the betterment of women’s social status” (Kantola & Outshoorn, 2007: 3). Other authors prefer the term ‘gender equality machineries’, because most of those agencies aim to promote gender equality rather than only women’s rights (Bleijenburg & Roggeband, 2007: 440). Gender machineries take different forms across countries, including an independent Ministry responsible for the portfolio of gender equality; administrative units within a larger Ministry; parliamentary, inter-ministerial or (semi-public) advisory committees and councils; or independent ombudsmen or equality commissions. Comparative state feminism studies have shown that gender machineries and femocrats (single bureaucrats and decision-makers who promote feminist ideas, actors, and demands)26 function as important mechanisms by which women’s movements can ‘gender policy debates in a feminist way’, which means making

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26 McBride & Mazur (2010: 4-5) define femocrats as bureaucrats and decision-makers who promote ideas, actors and demands based on gender consciousness, women’s solidarity and the cause of women. Other definitions also add feminist deputies to the category.
sure that ‘policy content formally acknowledges the gendered nature of the social problems and designs solutions that attempt to redress gender-based inequalities’ (Mazur: 2003).

In similar vein, comparative studies on immigrant integration point to other agencies that create venues for non-governmental actors, like migrant associations or anti-discrimination organisations, to shape policy debates on this particular issue, such as offices charged with anti-discrimination or integration, consultation councils for immigrant ethnic minorities, or representative bodies for religious groups (Koopmans et al., 2005: 65). In other words, by privileging certain actors and institutionally anchored frames, state’s institutions and governing strategies of gender equality, immigrant integration and state-church relations are expected to shape policy responses regarding the hijab.

3) **Shifting constellations of power and the availability of influential allies.**

Finally, we may expect that (changing) configurations of power will have a significant impact on the ways in which the issue of the hijab is understood and debated in parliament (Arrow 2). Arrow 3 in Figure 1 above indicates that the framing of the hijab in parliament is seen here as an intervening variable explaining policy responses. Erik Bleich (2003) has explained that, when frames are shared by a wide range of actors, they will have the most impact on policy outcomes. Moreover, if frames become taken for granted, this may close off potential challenges, which will strongly impact policy-making decisions, particularly if frames are formalised in law. But as Bleich (2003: 185) points out, even marginal frames can influence policy outcomes when those controlling the levers of power support that portrayal of the issue and the course of action suggested in the frame. Moreover, the entry of new, powerful political parties into parliament can challenge the framing strategies of established actors, necessitating either competition or alliance (Koopmans et al. 2005).

The constellation of power also determines the opportunities for non-governmental actors to influence the policy deliberations on the hijab. The availability of allies in a given party system for such outsiders is related to the cleavage structure, because political parties will mobilise for their side of each cleavage when they feel that their vested interests are challenged. Fetzer & Soper (2005: 128) have, for instance, noted: ‘Whether out of principle or self-interest, Christians are more likely to fight for state accommodation of Muslims’ religious practices in Germany, where church and state work together on various issues, than in France, where the institutions are rigidly separated’. This suggests that the

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27 Amy Mazur’s definition was used in the Research Network on Gender Politics and the State (RNGS), a research network consisting of 38 scholars from 16 Western post-industrial countries. It compared the policy success of women’s movements across five different policy issues in thirteen post-industrial democracies over four decades in order to find out to what extent gender machineries were successful in advocating for women’s goals in policy-making. The Network concluded that many gender machineries did help ‘gender’ the terms of policy debates by providing access to women’s movements, and rarely promoted non-feminist ends. Particularly if the political environment was otherwise unfavourable, women’s movements benefited from feminist insiders working within the state to gender policy debates to back-up their claims (Mc Bride & Mazur, 2010: 241-266): http://libarts.wsu.edu/polisci/rngs/ (Retrieved December 3, 2010). Other studies show that gender machineries only have significant impacts if they have political-institutional and material resources and are backed by ideological support from the government (Teghtsoonian & Chappell, 2008).

28 Kriesi et al. (2006) include the cleavage structure in the configuration of power. However, because the cleavage structure may be more stable than the shifting constellation of power, I treat these aspects separately.
presence of strong religious parties, in combination with cooperative state-church patterns, will facilitate Muslim women finding allies to claim the right to express their religion in public. The representation of strong anti-migrant parties, in contrast, may decrease the chances of finding allies for claims of multicultural recognition (Koopmans et al., 2005). In a similar vein, comparative gender policy studies have pointed out that parties that have historically allied with and included feminists, most often left-wing parties with a larger number of female legislators, are most likely to defend women’s equal right and opportunities (Mazur & McBride, 2006), albeit not in all policy fields (Weldon, 2002; Zippel, 2006).

The (shifted) constellation of power between and within political parties is thus expected to impact the framing of the issue in parliament, which is related to the institutional features of the political system (in proportional electoral systems with low thresholds for small parties to enter the parliament, opportunities are greater for small parties to exert influence on parliamentary debates and policy responses than in winner-take-all systems). In other words, we may expect that differences in the framing of the hijab both between and within countries can partly be explained by differences in countries’ configurations of power. Conversely, cross-national similarities or convergences in framing can often be tied to similarities in the power relations between and within parties in the three countries in question (Arrow 1 in Figure 1).

Finally, arrows 4 and 5 of Figure 1 indicate the feedback effects of both framing and policy responses on the political opportunity structure. Through framing processes, political actors can seize, create and disregard the political opportunities their structural environment offers. Political actors may subsequently expand institutional logics, reinvigorate existing cleavages and eventually push for policy responses that change existing institutional patterns, if they manage to rally enough support for their policy frame. Even though institutional change is not easily achieved, actors may be able to make more incremental changes to existing laws, policies and governing strategies, with a shift in government providing new windows of opportunity. In other words, although the term political opportunity structure suggests a model that is static and unchangeable, both institutions and the political context overall may change due to the dynamic interplay among and between actors and their environment (cf. Koopmans et al., 2005; Roggeband, 2002; Zippel, 2006).

In order to test the extent to which such issue-specific opportunity structures have shaped the framing and regulating of the hijab, I must first determine the differences in how the issue has been framed and regulated. Next, I must analyse the extent to which those differences can be linked to the general and to the issue-specific opportunity structures of state-church relations, immigrant integration and state feminism. Therefore, the following research questions and sub-questions will guide this dissertation:

1. What differences and similarities existed in the framing and policy responses to the hijab in France, the Netherlands, and Germany from 1985-2007?
2. To what extent can country-specific opportunity structures explain differences in framing and policy responses to the hijab?

In order to answer this second research question, I will seek to answer the following sub-questions:
• What are the differences in the general characteristics of the three countries’ political systems, and what can we expect on the basis of these differences for policy-formation processes? Chapter 3 compares these differences, and also scrutinizes available political opportunities at the European level by elaborating upon European Equality Directives and the jurisprudence of the European Court of Human Rights on the hijab issue.

• To what extent were religious cleavage structures still salient and open in France, the Netherlands and Germany before the first conflicts about the hijab emerged? Which laws and policies regulate state-church relations? What are the differences in the representation of religion in the party systems? What can we expect on the basis of these differences for the framing and regulating of the hijab? These questions will be answered in Chapter 4.

• How salient and open were cleavages around nationality in the three countries when the first hijab debates occurred? Which differences and similarities exist between the laws and policies regulating migrants’ naturalisation and integration, including their informal institutional logics? How have anti- and pro-immigrant parties fared in the three countries? How can we expect these differences to affect the framing and regulating of the hijab? These questions will be answered in Chapter 5.

• How did gender cleavages develop in the three countries, and to what extent are such conflicts still salient and open? What differences exist in the gender machineries, laws and policies, and governing strategies that regulate gender relations and women’s emancipation in the three countries? Which parties have allied with feminist movements? What can we expect for the framing and regulating of the hijab based these differences? These questions will be answered in Chapter 6.

• To what extent did my research findings correspond to the expectations that were raised in Chapters 3 to 6? Which differences and similarities cannot be explained through the issue-specific opportunity structures? In Chapters 7-9 I will analyse the policy debates and policy responses for each country over time.

In the conclusion, Chapter 10, I will compare the differences and similarities in the saliency of the issue, in the policy frames that structured the debate, in the actors involved in politicising the issue, and in the policies that were developed for different types of hijabs and for different (public) realms, and will thus answer the first research question. I will also provide more detailed conclusions to the second research question.

2.4 Design of the study

In order to scrutinise the impact of existing institutions and policy paradigms on policy-formation and policy-making processes on the hijab, I have chosen a comparative method (Lijphart, 1971) that is case-oriented (Ragin, 1989). The cases have been selected on grounds of a ‘most similar’ approach, meaning that the three cases have many characteristics in common, but differ on some of the explananda (Przeworski & Teune,
As explained in the introduction, France, Germany and the Netherlands are all members of the European Union, are all social-welfare states, and all have a substantial number of Muslims among their citizenries. In the literature on citizenship and integration models, however, these three countries are often represented as paradigmatic examples of distinctive citizenship models (ethnic, civic-assimilationist and multicultural); also the state-church literature emphasises France and Germany as ideal-typical examples of different state-church regimes with French laïcité being contrasted to German church-state cooperation, while the Netherlands is often represented as an intermediary case between strict secularism and corporatism.

Yet, the hijab is not only worn by Muslims - a religious minority to have arrived in Europe through migration - but also a gender-specific dress and religious prescription. Because comparative gender research suggests that countries’ gender machineries and policies have path-dependent effects on certain policy fields of gender equality, I also included this literature to discern gender gender cleavages, institutions, and underlying logics and ideas of masculinity and femininity or equality. My case selection has therefore been theoretically guided in order to discern and specify the ‘issue-specific’ elements of institutional regimes that are most relevant for studying policy-formation processes on the hijab, which are analysed in a context-specific, detailed and historically sensitive way in Chapters 3 to 6 (Bader, 2007b: 876).

The focus of my analysis lies on the national level. Nonetheless, in the federal system of Germany I will also take the regional level into account, because policy decisions on the hijab have been decentralised to the authorities of the Länder, at least in the realm of education and the public service. I analyse the policy-formation process in four (of Germany’s sixteen) federal states, where debates resulted in different policies: Baden-Württemberg, where headscarves are banned for teachers but Christian and Jewish symbolism is tolerated; Berlin, where all religious and political symbolism are forbidden for both teachers and other public officers; and Schleswig-Holstein and Rhineland-Palatinate, two states that continue to allow teachers to wear signs and dress that may express their personal religious affiliations. In order to understand these different policy responses within the same polity, I have analysed regional differences in the constellation of power and tried to pay attention to differences in the cleavage structure and institutional patterns at the Länder level.

2.5 Data

In order to analyse the issue-specific opportunity structures, I have made use of a wide range of secondary literature on countries’ political systems, state-church patterns, citizenship and immigrant integration policies, as well as gender equality policies. Because the comparative literature on countries’ different gender equality policies and governing strategies is still an incipient research field, I have also sometimes made use of primary sources, like governments’ policy reports, when scrutinising the specific institutions that countries have developed to foster (migrant) women’s equality.

In order to trace the different stages of the policy process on the hijab, I have used primary parliamentary sources. Parliament is the central arena where legislators can put an issue on the agenda and formulate and deliberate policies. Using parliamentary sources will allow me to focus on the different ways in which national politicians understood and
debated the issue, which are directly related to non-discursive social practices like regulations, policies and laws. Moreover, if there is one arena where institutions and laws may have structured framing then it is the Parliament. Politicians are directly socialised in different policy legacies, and must relate to them when deliberating an issue and formulating policies.

The data set consists of parliamentary debates (in the Lower House) on the issue, parliamentary questions, policy proposals or motions of deputies, parties or Ministers, subsequent minutes of meetings between parliamentary commissions and Ministers or of meetings with non-governmental actors, and policy declarations of Ministers. When legislative proposals were sent to the Senate, as in France, I also collected such parliamentary debates (in Germany, all Länder governments are unicameral. The issue was hardly addressed at the national level where a kind of Senate does exist, the ‘Bundesrat’; in the Netherlands, the First Chamber has so far not been involved in the legislative process). All documents were found in the parliamentary databases or archives of each country by means of selected keywords. Because the search engines of each database (or the indexes of hardcopy parliamentary sources) worked differently, I used a wide range of keywords to find all relevant policy documents. Due to Germany’s federal system, documents were also retrieved from the parliamentary databases of the four federal states of Baden-Württemberg, Berlin, Schleswig-Holstein and Rhineland-Palatinate. The number of documents found differed per country and will be mentioned in the empirical chapters. In total, 192 law proposals, motions, parliamentary discussions, questions and policy reports were found and analysed, which were complemented by other policy documents such as research reports and advices of extra-parliamentary committees.

The time period of my research runs from 1985 until 2007. In 1985, the issue of the hijab emerged for the first time on the political agenda in the Netherlands. In France, policy debates started in 1989 and have continued to be salient until today. In Germany debates only started in the late 1990s. My period of data collection ended in 2007, but since policy debates on the hijab have continued beyond 2007, I have collected and analysed additional data on later policy discussions in a less systematic manner, in order to follow current developments and policy responses.

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30 Databases that were used to find parliamentary sources were: Netherlands: www.statengeneraal-digitaal.nl (for documents before January 1, 1995) and www.parlando.sdu.nl (documents after January 1, 1995); France: http://www.assemblee-nationale.fr (documents after 1993). Documents before 1993 were gathered manually in the archives of the Parliament in Paris. Documents in the French Senate were found in http://www.senat.fr/recherche/index.html; Germany: http://dip.bundestag.de (Germany). The Länder Parliaments have their own online databases. In Germany, I asked for additional documents that were not accessible online.

31 The parliamentary documents on the Netherlands were collected in the first period of research (2006). Those for France were collected during a research period at the Centre of Cultures and Urban societies (CSU) of the Research centre of sociology and Political Science (CNRS) of University Paris 8 in France from September to December 2007. Those for Germany were
Parliamentary sources have two important shortcomings: firstly, actual decisions may have been made well before the policy deliberation in Parliament, or take place behind closed doors after parliamentary debates (Jacobs, 1997). Hence actual policy decisions may be influenced by factors other than mere parliamentary deliberation. I did not have access to data on those debates that took place between ministers, higher bureaucrats and lobbyists before or after actual policy decisions were taken, meaning that even though parliamentary debates reveal a lot about these decision-making moments, I could not trace the final phase of the policy-formation process.32

Secondly, parliamentary debates are influenced by framing contests that take place in other forums. In addition to parliamentary sources, I made use of several legal sources to trace the policy process, such as important court cases on the hijab or advices of the Equal Treatment Committee, particularly in the Netherlands (in France and Germany, such Committees only exist since 2004 and 2006 respectively). But because this research is not a legal but a sociological study, I have only taken into account the most important and exemplary case-decisions and jurisprudence that structured governments’ policy responses. I also used some media-reports or extracts from feminist journals and websites to gather more information on the frames used by non-governmental actors involved in the policy-making process. Because a wide range of non-governmental actors have been invited to policy debates, particularly in France and Germany, I could subsequently find traces of larger public debates in parliamentary sources. Moreover, politicians referred to the claims of non-governmental actors (see also Jacobs, 1998). I did not, however, systematically analyse the influence of media debates on the ways in which politicians deliberated and understood the issue of the hijab in Parliament (but see Roggeband, & Vliegenthart, 2007).

2.6 Method of analysis

In order to explain the emergence and evolution of policy frames and policy responses, I have used a method of ‘thick description’ (Geertz 1973) and ‘process-tracing’ (George & McKeown, 1985). Process tracing is a method for ‘assembling bits of evidence into a story of what happened, detailing a sequence of events leading up to the event of interest’ (Weldon, 2002: 26). This means that I have described in a qualitative way the different stages of the policy process, from the time the issue of the hijab was first put on the agenda to the moment that governments responded.

Moreover, I used the method of ‘interpretative policy analysis’ to study the construction of the hijab as a policy problem. The ontological and epistemological premises of this particular method are grounded in social constructivism (Yanow, 1996). Interpretative policy analysis focuses on how social ‘problems’ are socially constructed in the ways in which politicians speak about them and offer solutions addressing them (Berger & Luckmann, 1966). This analysis of the social construction of policy problems through discourse is also known as the ‘argumentative turn in policy analysis’ (Fischer &

32 It must be noted that the focus of this research lies on explaining cross-national differences in the framing and regulation of the hijab. Even though I used concepts and insights of public policy analysis, this study does not aim to analyse policy formation and implementation in order to develop theoretical models that can help improve this process (e.g. Van de Graaf & Hoppe, 1992).
Forester, 1991). This interpretative method allowed me to follow the origin, content and consequences of certain policy frames, who was involved in defining the meaning of the issue at stake, and the extent to which their policy frames shaped authorities’ policy responses (in laws, reports or other decisions).

In order to measure its level of contentiousness, I counted the number of documents in which the issue of the hijab was addressed. I only selected those documents that discussed the issue of the hijab itself. Debates within extra-parliamentary committees were analysed for their frames but not taken into account to measure the saliency of the issue in the Parliament. In order to scrutinise which actor or party put the issue on the agenda in each country and how frequently, I counted the number of parliamentary questions, law proposals and motions submitted by deputies or parties.33

In order to compare the framing of the issue, I used a qualitative method of frame-analysis that allowed me to identify similarities and differences in the ways in which the issue was constructed as a problem, and the solutions formulated. I largely followed the ‘critical frame analysis’ approach, as developed by Mieke Verloo (2005).34 Her approach has been used in an adapted version in the cross-national research project VEIL, in which we compared countries’ policy frames in public debates on the hijab (2006-2009).35 (See Appendix).

Verloo’s qualitative methodology of constructing the policy frames is well suited for the aims of this dissertation. It uses an ‘analytic matrix’ in which three important elements of policy frames are translated in a list of ‘sensitising’ questions to help the researcher focus on three major categories of a frame: voice, diagnosis, and prognosis (Verloo, 2005). These three elements have been inspired by various existing frame theories (Stone, 1989; Snow & Benford, 1992; Graaf & Hoppe, 1992; Verloo & Roggeband, 1996).

First, the methodology takes from Ferree et al. (2002) the idea of ‘standing’, which captures who has a voice in meaning-making processes. The first set of questions, concerning voice, therefore seeks to answer who should speak, on which occasion, to which audience, and in what form. In contrast to the use of standing by Ferree et al. (2002), who only include actors granted their own voice, this set of questions also draws attention

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33 I used all different types of documents to scrutinise the framing of the issue and to trace the different stages of the policy-formation process, including the reports of extra-parliamentary committees. The documents had to concern the question of the hijab in the national polity (even though parallels could be drawn to other countries).

34 Verloo developed this method of frame analysis for the MAGEEQ project (2003-2007) that studied and aimed to explain different countries’ policy frames and policies on gender equality. I have also been inspired by Carolyn Bacchi’s (2006) ‘what’s the problem represented to be’ approach. Like Verloo’s method of frame analysis, it is rooted in the Foucauldian discourse tradition that pays attention to how language constructs, reifies or changes asymmetrical relations of power. Yet, while Verloo’s approach is more focused on the imprint of policy discourse on the formation and impact of (gender equality) policies, Carolyn Bacchi is more concerned with the unspoken, implicit assumptions that sustain and generate certain hegemonic ‘regimes of truth’, their social production (in policies, laws, institutions) and effects on subjects’ self-understanding, hence less suitable for the aims of this study.

35 Values, Equality & Differences in Liberal Democracies (VEIL) was a 6th framework project running from 2006-2009. It compared the debates and policies concerning female Islamic head and body covering in eight European countries to scrutinize which gendered values were renegotiated and collective identities were constructed: the United Kingdom, Germany, France, the Netherlands, Denmark, Austria, Greece and Turkey: www.veil-project.org.
to indirect, described, and criticised voices that are referred to in the text. This allowed me to identify who has been involved in the construction of the frame and who supported it and, conversely, whose frame was countered or delegitimized. Voice often tells us much about someone’s standing and authority on the subject matter. It also helps the researcher to identify discourse coalitions (Hajer, 1995). Discourse coalitions can be defined as networks of actors sharing similar discourses around one or more policy frames, which may begin to structure certain policy fields that can inform a course of action or strategies of regulation (Maussen, 2009: 31).

Second, Verloo’s approach draws on Snow and Benford’s (1992) idea that policy frames consist of a certain understanding of a problematic condition or situation defined as in need of change (the diagnosis). The diagnosis comprises ‘causal stories’ that help identify who or what is to blame or to be held responsible for the identified problem (Stone, 1989). Through causal stories, actors can attribute responsibility to a certain group or category. Conversely, they can attribute clear responsibility for policy success to themselves or another particular actor through intelligible and convincing stories explaining such causality. Graaf and Hoppe (1992) have similarly structured policy frames according to explicit and implicit ‘causal chains’ about what is seen as the cause and what as the effect of a certain policy problem. The second set of questions thus focuses on what is seen as the problem of the issue. Which causal stories are used to explain that problem, including who is seen as the perpetrator and who as the victim of the problem?

A third important element of policy frames, drawn from Snow and Benford (1992), is the prognosis - the articulation of an alternative solution to the problem, and the strategies for attaining that solution. This resembles Graaf and Hoppe’s (1992) ‘final’ chains, referring to the goals policy actors want to achieve and the means identified to reach these. The prognosis often goes together with a ‘motivational call for action’, a call upon others to act in concert to affect change (Snow & Benford, 1992). Graaf and Hoppe (1992) have called this ‘normative’ chains. Normative chains refer to the various (implicit) levels of what is seen as wrong and right, and how normative change should be achieved. Through such a normative call for action, frames help actors to makes the normative leap from what ‘is’ to what ‘ought to be’ (Scholten, 2007: 29). Thus the third list of questions asks: what is seen as the solution a problem? What means are identified to reach that goal? What call of action is being propagated to reach that change? Which values are being appealed to? And who is given voice in that course of action?

I used a simplified version of Verloo’s analytical matrix in order to develop frames out of my material. Table 1 lists an example of how I interpreted a Dutch parliamentary subtract according to the three elements of voice, diagnosis and prognosis. It concerns a meeting with the parliamentary committee and the Minister of Education in December 2008 on the Government’s plans to introduce a law on face covers. A deputy of the populist Freedom Party (Partij van de Vrijheid, PVV) calls for more restrictive measures.
Table 1 Analytical matrix for frame analysis

| Text fragment | "Another argument against the wearing of burqas in schools is, of course, that we cannot let Islam conquer and allow its uniforms. A second argument is that burqas are obviously women-unfriendly (...) I am satisfied with the top-down measures and happy to hear that the Minister ignores groups like the Secondary Education Board, which pleads for self-regulation. We all know what this means in these leftist strongholds: nothing will change. I am even wondering to what extent this law will be implemented in practice (...) why don't we just criminalize the wearing of burqas, so the police can interfere in case of non-compliance? (...) Make sure that the police can do something against it and that harsh penalties exist. In line with the motion of the Group Wilders, my party will come with an Initiative Bill, which proposes a new article in the Penal Code to criminalise the wearing of burqas, as well as to cut subsidies to schools that still tolerate the burqa: “three strikes, you’re out!"." |
| Title, date, location | TK 31 700 VII, no. 127 (December 24, 2008: 4). Transcription of a general consultation on 26 November 2008 between the Parliamentary Committee of Education, Culture and Science and the Minister of Education (Ronald Plasterk) about facial covering in schools. |
| Voices | Martin Bosma of the Freedom Party (Partij van de Vrijheid, PVV) |
| Type of hijab/Domain | Burqa, Islamic face covers in general. Educational domain. |

<table>
<thead>
<tr>
<th>Diagnosis</th>
<th>What is the problem and why?</th>
<th>What is not a problem?</th>
<th>Location/origin of problem</th>
<th>Active roles: Problem holder/Perpetrator</th>
<th>What are the effects of the problem/non-action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burqa is a ‘uniform’ of aggressive Islamist ideology; burqa is a symbol of women’s oppression</td>
<td>X</td>
<td>Islam</td>
<td>‘leftists’ are part of the problem, because they don’t act against Political Islam</td>
<td>Tolerance of burqa in schools will lead to ‘Islamisation’ of society and gender segregation/oppression</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Prognosis</th>
<th>What is the solution and which action should be taken?</th>
<th>What is not a solution? How is non-action legitimized?</th>
<th>Which means to reach the goal?</th>
<th>Passive roles: Targets/Beneficiaries</th>
<th>Who should act</th>
</tr>
</thead>
<tbody>
<tr>
<td>A law that bans the burqa, at least in lower and higher education</td>
<td>Decentralization of policy to schools will lead to inaction and further ‘Islamisation’</td>
<td>Change penal code to criminalise the wearing of burqas and penalise schools that continue to tolerate face veils</td>
<td>Schools are targets, unclear who benefits from solution, possibly Dutch society that should be protected from ‘Islamisation’</td>
<td>State, police and school inspectorate</td>
<td></td>
</tr>
</tbody>
</table>

| Voices | Martin Bosma of the Freedom Party (Partij van de Vrijheid, PVV) |
| Type of hijab/Domain | Burqa, Islamic face covers in general. Educational domain. |
I coded all country’s parliamentary documents on the hijab according to the three elements of this matrix. Then I compared the matrixes, searching for similarities and differences in the problems discussed and the solutions suggested. Based on this comparison, I constructed several frames for each country. Through repeated re-reading of the material, gaining new perspectives on the material, I sometimes revised previously constructed frames. Verloo’s method of interpretative process allows for such ‘flexible coding’, as it does not use pre-determined boxes of frame-elements (which are often used to quantify frames). I then compared the frames between the countries, and reconstructed larger frames that were clustered in 3 frame categories consisting of, first, frames that discus the hijab in relation to state-church relations; second, frames that discus the hijab in relation to social cohesion and public order; and third, frames that discus the hijab in relation to gender and women’s emancipation (see below). I constructed these three categories and rather large frames, because I ended up with a plethora of sub-frames for each country that made any cross-national comparison impossible. The categories are merely a tool to enable the systematic comparison of frames across countries; in reality the frames that belong to each category intersect. In order to enhance the replicability of my method of frame analysis, I have attempted to empirically substantiate my frame concepts by providing detailed, thickly described, textual evidence that is taken to be representative for a certain frame. This will be illustrated in in the empirical chapters.

In order to measure the differential impact of policy frames across countries on actual policy responses, I compared the actors that were using the frame, the direction in which they used it, and the position of power they had in deciding upon the subsequent course of action. In my empirical chapters, I will illustrate that politicians can use the same diagnostic frame yet come to different conclusions on the course of action to take, even though diagnostic frames often entail a particular direction in the prognosis. Actors can also deny the diagnosis tabled by others, or come up with counter-arguments to deconstruct its causal logic. In order to show the resonance of the frame in that particular context, I nonetheless coded actors as using that particular diagnostic frame even if they did not support its direction (see also Ferree et al., 2002: 52). In the empirical chapters, I will show which frames belonging to each of the three metacategories structured the debates in each country, how this changed over time, and how this eventually shaped policy responses, relating it to power constellations and political institutions. In the conclusion, I will come back to the ways in which institutional patterns of state-church relations, immigrant integration and gender shaped, and were themselves shaped, the framing of the hijab in the three countries’ parliaments.
### Category I: State-church relations frames

The frames clustered in this category all centre on the relation between state and (minority) religions; the divide between public (neutral) and private (particular) spheres; and the balance between conflicting (religious freedom) rights and interests of public neutrality and religious peace

<table>
<thead>
<tr>
<th>1) Conflict with state neutrality frame</th>
<th>2) Religious rights and pluralism frame</th>
<th>3) Christian Occidental frame</th>
</tr>
</thead>
<tbody>
<tr>
<td>the central diagnosis of this frame is that the wearing of hijabs in public institutions conflicts with or threatens the separation between church and state or state neutrality and/or infringes upon the religious freedom rights of third persons.</td>
<td>this frame argues that the wearing of hijabs is a religious freedom right protected by the state. It is often used to argue that prohibiting the headscarf leads to an undesirable secularisation of public space and conflicts with state-church relations.</td>
<td>this diagnosis of this frame is that hijabs symbolise a different cultural or ideological value system that conflicts with human rights, democracy and progress. Since public school teachers must teach children according to such values, it is problematic that they wear hijabs.</td>
</tr>
<tr>
<td>It is often used with a prognosis that argues in favour of a ban on all religious symbols in public institutions, with the aim to guarantee the rights and liberties of all citizens and/or societal peace. But actors may also offer different prognoses, for example that current legislation already contains sufficient means to prevent religious proselytism. Or, when used together with other frames like the Islamic fundamentalism or Christian Occidental frame, that only Islamic dress conflicts with neutrality and must be removed.</td>
<td>It is mostly employed to argue against a ban on hijabs. Accommodating all religious expressions on equal footing is seen as the best way to foster religious toleration and protect civic liberties.</td>
<td>It mainly goes together with a prognosis that propagates partial bans on the headscarf alone, arguing that kippahs and nuns’ habits do symbolise the Judeo-Christian civilization that the state needs to transmit. Some actors may, however, support the diagnosis yet object to legislation that only targets the headscarf. Others may dispute the idea that there is a clash of civilizations between Islam and the West or that hijab-wearing women cannot transmit this value system.</td>
</tr>
</tbody>
</table>
**Category II: Social cohesion and public order frames**

The frames in this cluster all deliberate ethnic relations and social cohesion; the integration of or migrant minorities in mainstream society; issues of public order and morality; or public security in relation to Islamic extremism.

1) **Segregation frame**: The diagnosis of this frame reads that the hijab indicates a rejection of integration and/or segregation by Muslim migrants. It symbolises them withdrawing in parallel societies, adhering to values other than those of the majority (communalism). The causal logic is that tolerating the hijab contributes to ethno-religious conflict and/or hinders the integration of other immigrant children who do not want to follow communal norms. It may also be argued that headscarves and particularly face veils cause feelings of estrangement and subsequently hinder social integration.

This diagnosis often goes together with a prognosis that calls upon Muslims to integrate more actively by removing the hijab, or upon the state to implement a ban on the hijab (and/or other religious signs). Prohibiting the hijab and stimulating shared citizenship would contribute to social peace and integration. But actors may also use a different prognosis, arguing that a ban only further segregates and marginalises Muslim migrants. Such actors may use the discrimination and participation frame to call upon the state to increase space for diversity and/or reduce class inequalities to foster integration.

2) **Political Islam frame**: The diagnosis of this frame argues that the hijab is a symbol of Islamic extremism that conflicts with values like the separation between church and state, religious tolerance or gender equality. Tolerating such symbols would be a naive multiculturalism, giving leeway to extremism and undermining individual liberties.

This frame often goes together with a call for legislation against the hijab and/or all political symbols in public institutions. Tolerance for intolerance would give leeway to Islamic extremists. Others may argue that such bans are only stigmatising Muslims, and subsequently play into the hands of Islamic extremists who can recruit more souls for their political projects. They argue for less symbolic measures to deal with religious extremists.

3) **Security and extremism frame**: This frame situates the face veil as a threat to security, because women are no longer identifiable. It is sometimes argued that terrorists or other criminals can hide underneath it and thus go undetected. This often goes together with a prognosis calling for a (context-specific) ban on face veils.
### Category III: Gender and emancipation frames

The frames in this category all deliberate the status of women in migrant cultures and/or society at large; the relation between the sexes, or between majority and minority cultures’ levels of emancipation; and conceptions of autonomy, femininity and masculinity, gender equality and women’s emancipation.

1) **Oppression frame**: the central diagnosis of this frame is that the hijab symbolises women’s submission and gender segregation in Islam and/or is a tool to oppress women and girls by (fundamentalist) men, family and communities following patriarchal norms. Accommodating such symbols would be gender-discriminatory or in conflict with values like gender equality.

   It is often used together with a prognosis that calls upon the state to liberate girls by prohibiting headscarves or all religious symbols. But actors may come with a different prognosis that argues that a ban is counterproductive by further isolating women and/or depriving them of chances to gain autonomy and/or that a ban conflicts with gender equality. They may stress civic education or soft measures like communal dialogue to change patriarchal cultural gender roles.

2) **Discrimination and participation frame**: this frame argues that prohibitions on the hijab are discriminatory (on grounds of sex and/or other grounds) and hindering the participation of Muslim women, subsequently contributing to the problem of their lacking (social-economic or cultural) emancipation as women and/or as minorities.

   It is mostly a prognostic frame that is used to call upon the state to combat discrimination and stigmatisation of hijab-wearing women in order to enable their participation and equal opportunities in society. However, some actors may use this frame to plea for the accommodation of hijabs in the private sector but still defend a ban in certain context like public institutions for other reasons, such as public neutrality or liberation of young girls.
Part 1. Political-institutional context. Governing religious, ethnic and gender differences in France, the Netherlands and Germany

In the next three chapters, I elaborate upon the political context in which the hijab controversies must be situated. In Chapter 3, I analyse the differences and similarities in the three countries’ general opportunity structures, focusing on the institutional characteristics of their political systems and shifting power constellations during the time that the hijab became a political issue. In this chapter, I also elaborate upon two relevant European institutions that may have affected policy-formation processes on the hijab: the European Court of Human Rights and the European Court of Justice. In Chapter 4, I analyse the differences between the ways in which the three countries have governed religion and the historical fault lines around religion that preceded these institutional frameworks. In Chapter 5, I focus on the laws, policies and strategies used by the three countries to govern migrant integration and ethnic relations. Finally, Chapter 6 focuses on historical conflicts over gender, and the institutions, laws and strategies that countries have developed to govern gender relations and to foster gender equality. The aim of these three chapters is to stipulate expected outcomes of the influence of the identified differences in each country’s POS on the politicisation of the hijab.
Chapter 3. The political systems in France, the Netherlands and Germany and a note on European institutions

3.1 Introduction

In this chapter, I will elaborate upon the general characteristics of the political opportunity structure in each country. The core of these structures comprise formal political institutions and configurations of power. Social movement scholars have compared such institutions by measuring the degree of openness of political systems for outside challengers and the strength of the state to implement policies (Kriesi, 1995; Hafner-Burton & Pollack, 2002). They have done this by examining the difference between the degree of territorial centralisation and the degree of functional centralisation. ‘Territorial centralisation’ refers to whether a state is a centralised or decentralised unit. In federal states, local and regional authorities have much more autonomy and power to implement policies than in centralised states. ‘Functional centralisation’ refers to the separation of power between and within the legislature (parliamentary arena), executive (government and public administrative) and judiciary (courts and legal bodies). Increased degrees of separation entail a larger number of institutional venues to challenge state’s policies, thereby restricting the capacity of the state to implement policies. Moreover, it matters whether countries have majoritarian or proportional electoral systems. Increased proportionality leads to a larger number of parties in the political system, and subsequently the need to form coalition governments. This enables more access for challengers to the political status quo, but simultaneously decreases the capacity of the government to act (Kriesi, 2004).

In addition to the formal institutional characteristics of the three countries’ political systems, this chapter analyses the least stable element of the political opportunity structure: the configuration of parties in power, from the moment when hijabs became politically contentious in that country until 2007. Because of Germany’s federal system, where states have autonomy over educational matters (including pupils’ and teachers’ headscarves), I will only discuss the power constellations at the federal level here. I will elaborate upon the constellation of power at the Länder level in chapter 7 on the German hijab controversy. I will conclude with some observations of how these general elements of the three countries’ political opportunity structures are expected to structure policy processes around the hijab.

This chapter will also elaborate upon two transnational opportunity structures that are relevant to the hijab question: the European Convention of Human Rights, protected by the European Court of Human Rights, and European Equality law, protected by the European Court of Justice.36 In the concluding chapter 10, I will come back to the influence of these two transnational institutions on national hijab policies.

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36 Other human rights institutions relevant to the restriction of the wearing of religious symbols in public areas are the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights (and the Human Rights Committee); the International Covenant on Economic, Social and Cultural Rights (all three legally binding on all European member states); the European Social charter (Not ratified by Germany); the Framework Convention for the Protection of National Minorities (not ratified by France); and the UN Declaration on the Elimination of All forms of Intolerance and Discrimination Based on Religion or Belief (see McGoldrick, 2006 for international human rights instruments other than the ECHR in hijab debates). See also: Steering Committee For Human Rights (CDDH), Committee of Experts for the Development of Human Rights (DH-DEV), Working Group B (2007), Report. Human Rights in a multicultural society. The wearing of religious symbols in public areas. Strasbourg, February 9 2007.
3.2 General characteristics of political opportunity structure in France, the Netherlands and Germany

3.2.1 Institutional characteristics

Kriesi et al. (1995) identify France as a strongly centralised state, both territorially and functionally. The Parisian centre remains powerful in most policy domains, including education (Poulter, 1997). The executive, consisting of a President and a Government chosen directly by the people, is powerful when compared to the other two countries for four reasons. First, the French political system displays some tendencies of a two-party system in which power alternates between relatively stable coalitions, each led by a majority party that can form parliamentary groups with smaller parties (Duyvendak, 1995). Because of the majoritarian electoral system, the 577 deputies of the French Parliament are elected for the national assembly in single-seat constituencies rather than through a proportional system. Small parties therefore have few opportunities to enter Parliament and to challenge the hegemony of the majority parties.

Second, in the 1958 Constitution of the Fifth Republic, the functions of the legislature to control the executive were limited, in order to prevent the instability characterised by the previous Republic. Although, the Senate has become a more important controlling institution over time, the Government is not responsible to the Senate. The Parliament has the last word on bills (Lazardeux, 2009). Until 2001, the power of the Government to enforce laws was sometimes impeded by periods of ‘cohabitation’, when a right-wing government was forced to cooperate with a left-wing President, or vice versa. Today, the legislature rarely fulfils its function of watchdog over the executive, since a 2001 referendum synchronised Presidential elections with Parliamentary elections. This means that the parliamentary majority is usually of the same party of the President (Bell, 2004), increasing the capacity of the executive to pass bills.

Third, the judiciary is the only institution that can successfully control legislation. The Council of State (‘Conseil d’État’) functions as legal adviser to the Government and the Constitutional Council (‘Conseil Constitutionel’) reviews legislation. Nonetheless, the French judiciary’s independence, too, is being undermined by executive control (Bell, 2004).

Finally, ordinary citizens do not have the right to appeal Government decisions before the Constitutional Council, nor can they influence policy decisions through direct democratic procedures. We may therefore conclude that if the Government or the majority party in Parliament proposes a law to regulate the hijab, it has much power to pass it.

The Netherlands is a unitary state, with the cabinet’s seat in The Hague determining the national agenda, including education policy (Kriesi et al., 1995). Functionally, however, its power is much more decentralised than in the other two countries. Due to the proportional electoral system there are no majority governments but parliamentary coalitions. The subsequent need to form compromises decreases the government’s power to act. Moreover,

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37 The French Senate has 321 members, 304 of which are elected for six-year terms by an electoral college consisting of elected representatives from each district, five of whom are elected from other dependencies, and twelve by the French Assembly of French Citizens Living Abroad.
small parties get easily access to national politics, since the threshold for gaining a parliamentary seat is lower than 1%. Since governments are dependent on the approval of Parliament (150 members) and the Senate (75 members) to push for legal reform, smaller parties’ consent is important to push through policy reforms. As a result, policymaking is a complicated and slow process (Duyvendak & Koopmans, 1992).

The power of the government to implement policies is, however, increased because of the lack of dualism in the Dutch political system. Parliamentary party-fractions tend to support controversial parts of the governing parties’ agenda. They will particularly support those sections that were agreed upon in the formation of a coalition agreement before the government is installed (Bonjour, 2009: 285; Outshoorn, 2000).

Moreover, the government’s power is not strongly reduced by the judiciary, which is relatively weak in the Netherlands. The Council of State cannot render laws void, as it only has an advisory function. Due to the absence of a Constitutional Court, no possibilities exist for citizens to challenge the constitutional compatibility of government policies. Finally, the Netherlands does not have a system of legally binding direct democratic procedures. We may therefore conclude that plenty of opportunities exist to negotiate about policies on the hijab, resulting in incremental policymaking, but once policy decisions have been made there are few chances to undo them.

Finally, Germany is a federal and decentralised polity, which gives the states (‘Länder’) much autonomy in certain policy fields, such as education and social services. This diminishes the power of the Federal Government (‘Bundesregierung’) in those policy fields, which include headscarf policies for public schools and kindergartens. Germany has a (rather complex) proportional electoral system, but with a 5% threshold in the political system to keep radicals out. Established parties subsequently have more power to set the agenda than Dutch government parties, because coalition governments consist of either the Social Democrat Party or the Christian Democrat Party, together with a minor coalition party. Furthermore, because party discipline is high, governments often face little opposition from within their parties in parliament, increasing their capacity to implement policies. Finally, no direct democratic procedures exist as part of the decision-making process that would allow civilians to challenge governments’ (headscarf) policies (Kriesi et al. 1995).

However, Germany has a strong judiciary, which provides opportunities to challenge policies through the courts. The Federal Administrative Court (FAC) assesses whether lower courts have rightly interpreted federal law in accordance with the national constitution. Moreover, citizens can launch constitutional appeals to the Federal

38 The Council of State consists of 28 sub-councils and is presided over by the Dutch monarch. Its members are appointed for life by the Ministers of Interior Affairs and of Justice. They are high profile figures from the judiciary, politics, economy, administration and science, with power to review law proposals, either those of the cabinet - that are per definition reviewed - or those of a deputy or party - that the Second Chamber may decide to sent to the Council for advice -.

39 The judges of the FAC are elected for life with a majority of vote by a special Federal Committee of twelve delegates, existing of members of the National Parliament (‘Bundestag’) and of the Federal Council (‘Bundesrat’). The Bundesrat exists of 69 prime-ministers/burgomasters and ministers/senators of one of Germany’s 16 (city) states. The number of seats reflects the amount of inhabitants of the constituent state. The Bundestag consists of 598 members, half of whom are elected via direct vote at local constituency level (‘Erststimme’), the other half from a regional list
Constitutional Court (FCC) to dispute policies. This is a highly influential constitutional safeguard with a broad range of powers (such as examining the compatibility of a pending piece of legislation with the Federal Constitution). Nonetheless, the Court’s effectiveness is often undermined by a lack of compliance with or evasion of its decisions.

Based upon the institutional characteristics of the political systems of the three countries in question, I expect that it is easy to push for a dominant policy frame on the hijab in the French Parliament, and for the Government to act upon it. Even though smaller parties may benefit from the divisions between the two largest parties, I expect that the French parties in power have much power to pass their desired legislation on the hijab. In Germany, in contrast, the Länder governments’ capacity to act may be constrained by the strength of the judiciary and to a lesser extent by coalition partners in government. In the Netherlands, a multiparty system with a low threshold for newcomers to enter parliament, I expect most frame-competition to occur, resulting in incremental policymaking. Once a decision has been made, however, fewer opportunities exist for opponents to challenge state-implemented policies than in Germany and, to a lesser extent, France where Constitutional Courts exist.

3.2.2 Party system and power constellations
In France, power constellations have twice shifted from Left to Right during the headscarf debates in France (1989-2007), with a right-wing Government having ruled since 2002. From 1988 until 1993, a Socialist Government ruled the country, headed by Prime Minister Jospin (Parti Socialiste, PS) and President François Mitterand (PS). It was during this period that the hijab issue was politicised for the first time. After a brief period of recognising migrants’ ‘right to difference’, a Republican discourse re-emerged that stressed individual inclusion and universal equality. The abandonment of multiculturalism by the PS in favour of an egalitarian discourse was mostly the result of Front National (FN), which used this discourse to call for the expulsion of intrinsically different migrants. The FN had gained 35 parliamentary seats in the 1986 elections when the Socialist Party changed the electoral system and allowed proportional representation, wrongly estimating that this would be to their benefit. When the Socialist Government entered office in 1988, it quickly reintroduced the two-ballot system. Hereafter, the FN has only managed to get one parliamentary seat in 1988-1993 and one seat in 1997-2002 (Ezekiel, 2006).
In 1993, a conservative right-wing coalition Government was elected into office, existing of the Democratic Union (Union pour la Démocratie Français, UDF) and Rally for the Republic (Rassemblement pour la République, RPR) and headed by Edouard Balladur (RPR), and from 1995 by Alain Juppé (RPR). Both right-wing Prime Ministers had to govern alongside Socialist President Mitterand until 1997. The Minister of Interior Affairs, Charles Pasqua (RPR), combined a tough stance on immigration with an attempt to bring Islam under state control, by re-launching contacts with Muslim leaders to create a representative Council.

In 1997, a pluralist left-wing coalition Government headed by Prime-Minister Lionel Jospin (PS) entered office, consisting of the Socialist Party, the Communist Party (Parti Communist de France, PCF), the Greens (les Verts), the Left-of-centre Radical Party (Parti Radical de Gauche, PRG) and Citizens’ Movement (Mouvement des Citoyens, MDC). A new period of cohabitation followed when Jacques Chirac of the RPR was elected President in 1997 for a period of seven years. This Government was preoccupied with European integration issues and made several significant steps to ameliorate the civic equality of same-sex couples and the political rights of women (see chapter 6).

In 2002 the PS was defeated when the Union for Popular Movement (Union Mouvement Populaire, UMP), a splinter party of RPR, won a major victory with 394 of 577 seats (known as the ‘blue surge’ due to the party’s colour). Ever since, the UMP has had an absolute majority, first under Prime Minister Jean-Pierre Raffarin (2002-2005) then under Dominique de Villepin (2005-2007) and today under François Fillon. Moreover, in the first round of the Presidential elections just preceding the parliamentary elections, the Socialist Jospin was defeated by the right-wing candidate Jean-Marie le Pen of the FN. Le Pen achieved 16.8% of the vote, just behind Chirac, after a successful campaign focusing on law and order and the delinquency of Maghrebian youth. Massive demonstrations followed to oppose the rise of the far-Right, resulting in Chirac taking 82% of the popular vote in the second round. Chirac remained President until 2007, when Nicolas Sarkozy won the Presidential elections who takes a restrictive approach towards immigration and strongly promotes French national identity. Together the UMP and PS currently make up 90% of all delegates in Parliament, making some scholars conclude that France has developed from a bipolarised system of Left versus Right into a bi-party system between PS and UMP (Sauger, 2009).

To sum up, the established Right and Left already faced the challenge of a strong populist right-wing party in the 1980s that made it politically untenable to emphasize respect for cultural differences without ‘othering’ migrants, making them vulnerable to expulsion. Since 2000, due to the increasing prevalence of nationalist forces in power, political opportunities for multicultural claims of recognition such as the headscarf have further decreased.

In the Netherlands, power constellations have shifted dramatically during the headscarf debates. When the first conflict emerged in the mid 1980s, the country was ruled by a coalition government of the Christian Democratic Appeal (‘Christelijk Democratisch

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42 In 2007 some UDF deputies (among them the former Minister of Education François Bayrou) established the democratic movement ‘MoDem’ whose candidates aimed to be more independent from the Right than the UDF, whereas another split off group of the UDF, the ‘Nouveau Centre’, accepts coalitions with predominantly the right wing party UMP to exert power.
Appèl, CDA) and conservative Liberal Party (Volkspartij voor Vrijheid en Democratie, VVD), followed by a government of the CDA and the PvdA. In the 1994 elections, the CDA was defeated for the first time in nearly a century. The incoming coalition government of Labour (Partij van de Arbeid, PvdA), conservative Liberals (VVD) and Liberal Democrats (Democraten ’66, D66), headed by Labour Party leader Wim Kok, shifted the focus from simply respecting cultural diversity to actively promoting immigrants’ social and economic participation. This secular coalition lasted for two terms, during which several prominent members of the Liberal Party and Social Democrat party broke the political consensus not to politicise migrant-related issues (see Chapter 4). Also the hijab issue re-emerged on the agenda.

The Netherlands had long prided itself for not having any substantial far-Right parties. From 1982-1986, Hans Janmaat of the small Centre Party (Centrum Partij, CP) only held one seat in the national Parliament, and from 1994-1998 three seats (turned into Centrum Democrats, CD). He defended the rights of native Dutch citizens against immigrants and refuted multicultural society. But his party was largely neglected by the established elites and therefore did not destabilise the party system. After the turn of the century, however, the Netherlands witnessed the rise of several new populist right-wing parties challenging the position of established parties, for example the new List Pim Fortuyn (Lijst Pim Fortuyn, LPF). The party was named after its late party leader, Pim Fortuyn, who was killed by a radical animal-rights activist in 2002.

In the parliamentary elections of May 2002, the LPF won 26 out of 150 seats in Parliament, a major victory. Since then, the established parties on both the Left and the Right have moved in the direction of the populist Right, hence converging in their stance on immigrant integration issues (Kriesi et al., 2006). In 2003, the CDA re-entered the government, along with the LPF and the VVD, headed by Prime Minister Jan Peter Balkenende. Curtailing immigration and promoting a more coercive integration policy were high on the new Government’s agenda. The CDA abandoned its previous multicultural stance, copying Fortuyn’s rhetoric that the Netherlands needed to be ‘reconstructed’ after eight years of Purple ‘destruction’. It stressed shared national values as a necessity for integration (van Kersbergen, 2008: 270). However, this Government was very unstable, because the LPF suffered from internal strife without the charismatic Fortuyn, and the cabinet fell within three months.

In the new parliamentary elections in January 2003, the Fortuynists took only eight seats (7 % of votes) and a new coalition was formed, consisting of CDA, VVD and D66. Like its predecessor, this Government opted for a more populist agenda regarding immigration and integration. This cabinet also fell prematurely in 2006 due to an internal conflict.\(^{43}\) In the new elections of 22 November 2006, the Socialist party (Socialistische Partij, SP) and the Christian Union (Christen Unie, CU) each won a substantial number of

\(^{43}\) The D66 decided to withdraw from the government when it turned out that the Minister of Integration, Rita Verdonk, had known about the fact that MP Ayaan Hirsi Ali (VVD) had not legally received her Dutch citizenship. Because of Verdonk’s zero-tolerance stance towards illegal immigrants, MP van der Laan of D66 submitted a motion that demanded her resignation as Minister of Integration, which was not accepted by a majority of parliament. Verdonk remained Minister in the subsequent cabinet. Hirsi Ali, a politician for the Conservative Liberal party VVD, had arrived in the Netherlands as a refugee from Somalia and lied about her father’s name to get a residency permit. She would become a very important actor in debates about migrant women’s emancipation and integration in the Netherlands (see chapter 6).
seats, as well as the new Freedom Party (Partij van de Vrijheid, PVV). It was established by Geert Wilders, who had left the VVD in 2004 in objection to the party’s support for Turkey to enter the European Union. Hereafter, Wilders radicalised his views against Muslim immigrants, equating Islam with fascism and calling the Prophet Mohammed a paedophile.\textsuperscript{44} A difficult round of coalition formation followed, which resulted in a Centre-Left coalition Government between the CDA, CU and the PvdA (2007-2010). Headed by two Christian parties, this Government emphasised shared ‘norms and values’ in a multicultural society that was deemed too permissive and too fragmented. This Government also fell prematurely in 2010 when the PvdA insisted upon pulling back from Afghanistan on short notice and its coalition partners disagreed. In October 2010, a new minority cabinet entered office, consisting of the VVD and the CDA. Its endurance is dependent on the support of the PVV, which has signed a parliamentary support agreement with the cabinet on certain key issues before it was installed.

In summary, while immigrant integration was already politicised in the 1990s, the rise of strong right-wing populist parties has contributed to a further discrediting of multiculturalism. Since established left-wing and right-wing parties have made significant movements in the direction of the populist Right, we may expect debates on the hijab in the Netherlands to have become heavily politicised and policies to more restrictive.

Finally, the German party system is likewise characterised by a class and religious cleavage. On the Left, the largest party is the Social Democrat party (‘Sozialdemokratische Partei Deutschlands’, SPD). The SPD gained a monopoly on the Left, once the Communist party (‘Kommunistische Partei Deutschlands’, KPD) in West Germany no longer managed to rally sufficient support in the parliamentary elections after 1953, and was eventually banned in 1956. The SPD continues to attract the blue collar vote (Bornschier, 2010: 169). Other new left-wing parties are the Green Party (Die Grünen) and the post-communist Party of Democratic Socialism (‘Partei des Demokratischen Sozialismus’, PDS). The Green Party was established in the 1970s and managed to pass the Federal Parliament’s 5% hurdle for the first time in 1983. It predominantly focused on ecological issues, pacifism and explicitly defined itself in terms of its support for feminism and, later, gay rights. After the Reunification of East and West Germany, the Greens merged with the former East German party Alliance ’90 (Bündnis 90). The PDS also emerged as a new party after reunification. In 2007, it merged with a former Western German left-wing party into the Left Party (Die Linke), currently the fourth-largest party in Germany.\textsuperscript{45}

On the right are the Christian Union parties (‘Christlich Demokratische Union Deutschlands’, CDU and its Bavarian sister party ‘Christlich-Soziale Union’, CSU) and the smaller centre-Right Liberal Democrat Party (Freie Demokratische Partei, FDP) that has taken side with the Union parties along the class cleavage in favour of economic liberalism. The CDU/CSU has advocated for a tough and nationalistic stance with regard to

\textsuperscript{44} His movie ‘Fitna’ - in which pages were ripped out of the Quran - was compared to Mein Kampf and screened all over the world. In 2009, several people appealed to the court of Amsterdam to accuse Wilders of instigating hatred and discrimination against Muslims and their belief. Currently, a higher appeal is pending, with Wilders claiming his right to freedom of speech.

\textsuperscript{45} Die Linkspartei/PDS had been formed in 2005 by SPD foreman Oskar Lafontaine and Gregor Gysi of the Party of Democratic Socialism (Partei des Demokratischen Sozialismus, PDS, the successor of the former East German Socialist Unity Party, SED, which was a communist party with a Marxist-Leninist ideology). In 2007, its name changed into The Left (Die Linke).
immigration. So far, no new right-wing party has succeeded in establishing itself as a competitor to the CDU/CSU (Kriesi et al., 2006). Extreme or populist right-wing parties have only existed at a regional level.\footnote{Such as the Democratic People’s Union (Deutsche Volksunion, DVU), the National Democrat Party Germany (Nationaldemokratische Partei Deutschlands, NPD), and the Republican party (Die Republikaner, REP).}

In Germany, the power constellations at the Länder level are most important for understanding policy-making processes on the hijab. At the federal level, political opportunities for multicultural recognition have increased. Germany was ruled by a coalition of CDU/CSU and FDP (1982-1998) when the first local headscarf controversy occurred in 1997. It was headed by the Christian Democrat Chancellor Helmut Kohl. This Government took the first steps towards allowing citizenship for second-generation children born of non-ethnic Germans (see chapter 5). In 1998, this 16-year conservative coalition Government was ousted from office by the first Red-Green coalition at the national level, consisting of the Social Democrat and Green parties (Bündnis 90/Grünen) (1998-2005). This cabinet, headed by Chancellor Gerhard Schröder of the SPD, further expanded German citizenship opportunities for non-ethnic Germans in 2000. After the parliamentary elections of September 2005, SPD and CDU were forced to form a Grand Coalition. In 2005, the first woman was sworn into the office of Chancellor: Angela Merkel of the CDU. In 2009, after the SPD scored a dramatic result in the federal elections, a new CDU-FDP coalition took office, which was confronted with new public controversies about Islam.\footnote{It was during this during this government that Islam was increasingly politicised, with two very different occasions triggering public debates about the compatibility of Islam with German values: first, a book by a politician from the Social Democrat party (Thilo Sarrazin, also member of the board of the Bundesbank) about the threat of Muslim immigrants to German society and, second, the statement of the newly elected German President Christian Wulff (CDA) that ‘Islam belongs to Germany’. See: Jürgen Habermas, ‘Leadership and Leitkultur’, \textit{The New York Times} (October 28, 2010).}

### 3.3 Transnational opportunity structures: a note on the role of the ECHR and the ECJ

Two European institutions may be particularly relevant to political debates on the hijab: the European Court of Human Rights, whose jurisprudence is based on the European Convention on Human Rights (ECHR), and the European Commission. To start with the latter: European countries must reckon with several Equality Directives issued by the Commission when deliberating and constructing policies on the headscarf, which concerns an equality claim on the intersecting grounds of religion, ethnicity/race and sex. First, the Race Directive (2000/43/EC) prohibits any discrimination on the basis of ‘race’ or ethnic origin in employment and regarding access to, and supply of, goods and services (covering both teachers and pupils, as well as all public and private employment). Secondly, the Framework Directive (2000/78/EC) prohibits discrimination on the basis of religion or belief, age, disability and sexual orientation in the labour market (covering teachers, teacher-trainees and other employees in public and private employment, but not pupils). Third, several gender-equality Directives (2002/73/EC; 2004/113/EC; 2006/54/EC) forbid discrimination on the grounds of sex in labour market/vocational training (covering both
teachers and teacher-trainees), as well as access to, and supply of, goods and services (which excludes education). France, Germany and the Netherlands have all echoed these equality directives with national legislation, which may provide new opportunities for non-discrimination frames. The European Court of Justice (ECJ) in Luxembourg overlooks whether nation-states comply with and interpret EU law uniformly. When in doubt, national courts can request a ‘preliminary ruling’ from the Court as to whether regulations that prohibit headscarves are compatible with EU law (Berghahn, 2011). So far, no country has requested such a ruling.

By contrast, the European Court of Human Rights (ECHR) in Strasbourg has adjudicated several headscarf cases. This Court oversees the European Convention on Human Rights (ECHR), which binds all 47 members of the Council of Europe, including the 27 EU member states. In contrast to the ECJ, individual women who consider their rights violated may appeal to this court. The Court protects the rights to both freedom of thought and to manifesting one’s religion, which are embedded in Article 9 of the ECHR. While the right to freedom of thought, conscience and religion is protected absolutely (an “internal freedom”) by the ECHR, the right to ‘manifest’ one’s religion or belief is only protected with certain caveats (“external freedom”) (see for a critique: Fernando, 2010; Vakulenko, 2007). This right may be subject to certain limitations if those limitations are prescribed by law, follow a legitimate aim and are proportionate to that aim. Article 9 stipulates some of these possible aims: ‘in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others’ (quoted from Loenen, 2009: 316). When balancing these aims with the right to religious freedom of the applicant, the Court takes into account the specific national context, including the relationship between state and religion, and the moment when the prohibitions are introduced.48

So far, no headscarf-wearing woman who claimed that her rights were violated under Article 9, or any other article of the ECHR, has won her case. And rather remarkably, the Court has not taken into consideration women’s rights to freedom of expression in its judgements.49 The Court tends to grant member-states a wide ‘margin of appreciation’ to proscribe the scope of religious freedom. Several times, it has legitimised restrictions imposed on school children and university students in the state education systems. In November and December 2008, the Court ruled on two cases, Kevanci vs France and Dogru vs France, which concerned the 1999 expulsion of pupils for wearing headscarves during physical education classes. The Court concluded that their right to religious freedom had not been violated because they had made an ‘ostentatious’ display conflicting with French secularism. Although the students’ parents had volunteered to replace the headscarves with hats, the court still considered the expulsion not disproportionate since the students could continue their education by taking distance courses. In Şahin vs Turkey, the Court found the prohibition on the wearing of headscarves

48 Also the right not to be discriminated against (as guaranteed by Article 14 and/or Protocol No. 12) or the right to education (enshrined in Article 2, of Protocol no. 1) may be applicable, but so far it has played no significant role in the Court’s jurisprudence (Loenen, 2009).

at Turkish universities to be compatible with Article 9, arguing that imposing limitations on the headscarf could be regarded as meeting ‘a pressing social need’ in the particular context of Turkey, where the headscarf had taken on political meaning and the majority of people adhered to the Islamic faith (Vakulenko, 2007).

Restrictions on civil servants’ rights to religious expression have also been deemed legitimate. In *Dahlab vs. Switzerland*, the Court ruled that the Canton of Geneva had legitimately required a teacher in a public elementary school to remove her headscarf while teaching in order to guarantee pupils’ right to neutrality. The Court linked the question of required neutrality to the question of gender equality. It argued that allowing the headscarf – as a ‘powerful external symbol’ - risked proselytising, communicating a message that was ‘hard to square with the principle of gender equality.’ The Court therefore found that it was difficult to reconcile the wearing of an Islamic headscarf with the ‘message of tolerance, respect for others and, above all, equality and non-discrimination that all teachers and professors in a democratic society must convey to their pupils’ (quoted from Loenen, 2009: 318). Attributing the meaning of gender inequality to the headscarf, it was considered legitimate that teachers had to compromise their religious beliefs in class. Because the duty of neutrality would also have applied to men wearing religious symbols, it was argued that there was no question of sex discrimination (see Skeje, 2007 for a critical reading).

In short, the European Court of Human Rights tends to leave countries a wide margin to interpret and balance human rights to religious freedom and equality, and has hitherto upheld most headscarf bans. In the empirical chapters on the headscarf debates in each country, we will see how actors referred to these institutions to advocate or contest prohibitions on the hijab. In the concluding chapter, I will come back to the influence of these two transnational institutions on national hijab policies.
Chapter 4. Governing religious differences in France, the Netherlands and Germany

4.1 Introduction

This chapter will elaborate upon existing theories of how national church-state traditions shape state accommodation of Muslim religious practices such as the headscarf. Various scholars have argued that particular national state-church traditions and ‘logics of the domestication of religious diversities’ (Sengers & Sunier, 2010) influence state responses to the religious claims of Muslims, which are the result of historical processes of nation building and conflicts between the national and the religious (Bader, 2007a; 2007b; Koenig, 2005; Monsma & Soper, 2009; Modood & Kastoryano, 2006). Fetzer & Soper (2005: 13) argue that “the constitutional and legal status of religion in each nation, along with the historical context through which the institutions of church and state have been related, are very significant in shaping how Britain, France, and Germany have accommodated the religious needs of Muslim groups. That history and these institutional structures have been key components in explaining the disparate ways in which states have accommodated the religious needs of Muslims.” In this chapter, I will elaborate upon my three countries’ state-church patterns and their respective framing and regulation of the hijab.

The chapter is structured as follows. Firstly, I will compare the saliency of the traditional cleavage between religious and non-religious groups and explain how this would be expected to affect the saliency debate over the hijab in each country. Secondly, I will compare the countries’ institutions, laws and strategies of governing state-church relations, as well as the neutrality of the state and the strategies it uses to incorporate, negotiate and co-opt religious groups. Because the hijab conflict has focused so strongly on students’ and teachers’ headscarves, I will focus particularly on the institutionalisation of religion in education. I will discuss how we might expect the hijab to be framed and regulated based on these institutions and how they regulate religion. Finally, I will elaborate on the role of organised religion in the party system by comparing various religious and secular parties and how they view existing state-church regulations. I will also formulate these on the expected availability of allies to defend the right to wear headscarves on the grounds of religious freedom.

4.2 National state-church patterns

4.2.1 Religious cleavages

In France, the religious cleavage stems from a historic struggle between the secular Republic and the Catholic Church over the nation and its citizens – often called the struggle between ‘two Frances’ (Bowen, 2007a). After the French Revolution, the Republicans tried to break the political power of the Catholic clergy, who had legitimised the old regime’s sovereignty by portraying the monarch as God’s chosen ruler on earth. In their attack on the Catholic Church, the Republicans brought collective religious expression under the control of the state. Religion was de-politicised and narrowed down
to a privatised notion of individual freedom of conscience (‘croyance’) in order to secularise the public sphere. This continuing conflict between the two Frances gave secularism a clear anti-clerical emphasis. This cleavage had its heyday when the Third Republic (1871-1940) attempted to curb the Church’s remaining power in the realm of education (Labourde, 2008: 44). By making secular education compulsory for six- to thirteen year olds, the Republicans attempted to take primary education out of the hands of the Catholic Church, which had used its monopoly over primary education to preach anti-republican, royalist doctrines. State-appointed teachers replaced local priests, with the intended effect of assimilating citizens of different backgrounds into rational, secular and loyal subjects (Scott, 2007: 99; 107). Existing childcare facilities run by Catholic orders were incorporated by the state and branded ‘maternal schools’ (‘école maternelle’; Morgan, 2003).

Because religious groups continued to struggle for the right to establish private schools and receive state subsidies, the religious cleavage continued to exist well into the 20th century (Bowen, 2007a; Labourde, 2008). The increasing secularisation and individualisation of French society weakened the Catholic clergy, even as the Republicans began to lose their anti-clericalism, gradually acknowledging the social role of religion and accepting the notion of a religious role in education. The Assembly of Cardinals and Archbishops of France publicly accepted laïcité in 1945, and one year later the Roman Catholic Church finally renounced its ambition to establish a confessional state.

Today, religious conflicts still occasionally flare up between combative (‘laïcité de combat’) and pluralist (‘laïcité ouverte’) secularism (Baubérot, 2005). Combative secularists seek national unity through secularisation, wanting the state to break all ties with religion and allow citizens only private expressions of faith. Historically this group included atheists and freemasons, Jews, Protestants and few Catholic anti-clerics (Joppke, 2009: 33-37; Fetzer & Soper, 2005: 73-76). By contrast, Pluralist secularists emphasised religious liberty and civic inclusion. This group historically included practicing Christians, and today also includes post-modernists who object to the homogenisation of the public realm (Labourde, 2008). A more recent example of the conflict between combative and pluralist secularists occurred in 1984, when the Socialist Government tried to eliminate state subsidies for private Catholic schools. Enormous demonstrations resulted, with more than a million people marching in French streets for the preservation of the ‘école libre’ (Duyvendak, 1995: 121). Because religious expression in schools has continually been a hot-button political question in France, we may expect that the issue of the headscarf will continue this trend when being related to religion.

In the Netherlands, the secular state developed to protect the autonomy and religious freedom of minorities. The seven Low Countries struggled for independence from Catholic Spain’s repression of the Calvinist Reformation, emerging as a relatively liberal state in terms of freedom of religion and thought. In the Republic of the United Provinces (1588-1795) Jewish and Protestant minorities and dissenters – even those who arrived as immigrants fleeing religious wars elsewhere in Europe - were tolerated. Although religious minorities did not enjoy the same rights as members of the Reformed Church – in particularly rights to public religious activity and to enter public office - their presence was tolerated, albeit within clearly stipulated boundaries. The result was that religious strife was contained (Maussen, 2009: 43-55).
At the end of the 19th Century, however, religious conflicts flared up when Dutch Liberalism took on an increasingly anti-clerical character (Maussen, 2009). Dutch Liberals passed a new law that cut funding for religious schools (Boekholt & de Booj, 1987; Monsma & Soper, 2009: 56). Religious minorities, including Catholics and orthodox Reformed Protestants, started mobilising jointly, organising religious subcultures to oppose the Liberals’ hegemonic secular nation-building project. Based upon the Protestant idea of ‘sphere sovereignty’ and the Catholic principle of ‘subsidiarity’, Calvinist and Catholic minorities successfully obtained equal rights to educate their members in their own institutions (Maussen, 2009).

These institutions became self-contained worlds of opposition, which were particularly helpful to religious and socialist minorities in emancipating themselves from their subordinate position (Kersbergen & Manow, 2008). The confessional parties (the Anti-Revolutionary Party of the Reformed Protestants and the Catholic People’s Party) quickly won a majority in parliament. When they were joined by the Social-Democrats in the 20th century - who had started organising separately in opposition to the liberal market state - the Liberals were forced to cooperate with this newly powerful opposition. In 1917, religious conflicts were temporarily settled when Article 23 of the Constitution guaranteed the right to equal financial treatment for private religious schools and public-authority schools (Hupe, 1993; Fetzer & Soper, 2005).

After the school struggle, Dutch society segmented along confessional and ideological lines, also known as ‘pillarisation’ (‘verzuiling’, 1900-1960) (Kriesi et al., 1995; Duyvendak & Koopmans, 1992). Members of the four politico-religious groups (Catholics, Reformed Protestants, Socialists and Liberals) went to different schools, sports clubs, social welfare organisations or hospitals, and had their own political parties, trade-unions and media networks. The elites of the respective pillars came together to govern the country and manage compromises, forming in a typical ‘consensus democracy’ that helped pacify old political cleavages over religion (Lijphart, 1968; Blom, 2000). In the 1960s, however, the pillarised consensus began to crumble as a result of democratisation, individualisation and secularisation. Various religious groups lost their traditional identities, and political parties ceased playing the role of mediator of these conflicts (Kennedy, 1995). Increasingly, religious freedom was also seen as the right of individuals to be free from religious tutelage (Maussen, 2009). By the time Muslim immigrants began to arrive in significant numbers, religious controversies no longer structured policy alternatives and no longer formed the basis of interparty policy competition (Eisinga, Frances & Ooms, 1997). Due to this pacification of religious cleavages, particularly in regard to education, we may expect that headscarves will not trigger much political controversy when framed in terms of religion.

In Germany, the religious cleavage has been depoliticised for more than a century. The Holy German Empire (10th Century to 1806) witnessed bloody conflicts between Catholics and Protestants when Luther challenged the position of the Catholic Church.

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50 The school law of 1806 regulated public and private religious primary education. Both enjoyed the right to state subsidies, and public schools had to teach on Christian morals. The liberal constitution of 1848 officially guaranteed private religious associations the right to establish private schools. The school law of 1857 changed this, declaring that only public schools could receive state funding, and that they had to be confessionally neutral and accessible for all pupils regardless of background. In 1878, religious schools regained their right to state subsidies (see for the history of the public school: Bockholt & de Booy, 1987).
Since the Peace of Augsburg in 1550, the German princedoms that formed the Holy German Empire were ruled by the ‘cuius regio, eius religio’ principle, meaning that subjects followed the religion of the prince. When the 1648 Peace of Westphalia ended the bloody Thirty Years War, the Catholic, evangelic-Lutheran and the Reformed (Calvinist and ‘Zwinglianer) Churches were officially recognised as state churches (‘Landeskirchen’). Ever since, states and various denominations have cooperated consensually in various domains, such as healthcare, social welfare and education.

The most recent religious conflict occurred in the late 19th century, when Prussian Protestant nationalists - organised between Conservative and Liberal parties - tried to marginalise Roman Catholics during the so-called ‘Kulturkampf’ (1870-1891). Prussian nationalists saw the Catholics as a national threat who were opposed to both Luther’s Reformation and the Enlightenment (Amir-Moazami, 2007: 146). In their efforts to create a Protestant nation, all Catholic schools were brought under state control, and Catholics lost their seat in the (Prussian) Ministry of Education and their educational subsidies (Fetzer & Soper, 2005; Koenig, 2003). This triggered the mobilisation and emancipation of the Catholics, whose Catholic Centre Party became one of Germany’s main political players, forcing the Protestant conservatives into cooperative efforts. Thereafter, the Roman Catholic and Protestant churches have each maintained a strong position in civil society and politics, cooperating with the state over public life. Only under National Socialism did the Government temporarily cut ties with the churches in managing social welfare and education.

After the Second World War, German churches regained the social centre. In the Federal Republic, the CDU became a multi-confessional party that integrated practicing Catholics and Protestants under one roof (Koopmans, 1995). In the German Democratic Republic, however, religion was marginalised. In 1968, GDR churches were deprived of public status because they were seen as opposed to the socialist state. But after the reunification in 1989, churches regained their public status and relations normalised. Due to this recent division, however, the religious cleavage is still more salient in Eastern Germany. In 2009, a conflict occurred in Berlin when the state government wished to replace religion courses with general ethics courses. This triggered the mobilisation of conservative parties and churches that launched, in vain, a public campaign to retain their right. Based on the relaxation of religious cleavages in Germany, we may expect that the visibility of the headscarf will not trigger much controversy when framed in terms of religion, yet that religious and secular forces in Eastern German states may seize it as an opportunity to mobilize for their cause.

In sum, traditional religious cleavages have declined in all three countries. In France, however, religious conflicts endured longer and have remained salient to this day. In Eastern Germany, relations between state and religion have also been tense during the era of Socialism. I therefore expect that the headscarf will trigger the most debate in France, as well as some in the former Eastern German states, when framed in terms of state-church relations.
4.2.2 Laws, policies and governing strategies regulating state-church relations

France
In France, few formal opportunities exist for religious groups to claim state support. Historically, the Republic has attempted to depoliticise religion and break the power of the Catholic Church by insisting upon a secular public realm (‘laïcité’). The Educational Laws of the 1880s championed by Jules Ferry, along with the Separation Law of 1905, form the institutional framework of this Republican secularism, aiming to narrow religion to a personal, private matter (Labourde, 2005; 2008). The Educational Laws subjected all schools to a nationwide uniform curriculum, aiming to bring religion in line with science. Only lay-teachers and secular teaching were allowed in public schools and state-run kindergartens. In order to further reduce the power of the Catholic Church, the Separation Law took away the public status of all religions and severed their financial support. The first two articles of the 1905 law read (quoted from Labourde, 2008):

Article 1. The Republic ensures freedom of conscience. It guarantees the free exercise of religions.

Article 2. It neither recognises nor subsidises any religion.

This doctrine of separation is implicitly referred to in Article 1 of the 1946 Constitution (also included in the 1959 version), which reads: ‘France is an indivisible, laïque, democratic and social Republic. She ensures the equality of all citizens before the law without regard for (their) origin, race, or religion. She respects all beliefs’ (quoted from Fetzer & Soper, 2005: 76). The separation doctrine means that state depends on abstention from religious affairs. In this light, the state does not officially subsidise salaries or expenses for any form of worship. Nor does the state offer any religious education in public schools.

The neutrality of the state also lies in its equal treatment of all citizens regardless of faith, identity and affiliations, a principle embodied in Article 2 of the 1958 Constitution. The state officially guarantees religious freedom for all, as well as permitting the public exercise of religion for organised groups (‘cultes’) and freedom of conscience of

51 The 1905 law does not apply in Alsace-Moselle, because the region was part of Germany when the law was passed. There, the state finances religious education, theological seminars and prayer spaces, and religious instruction (in Christianity and Judaism) is still a mandatory part of public instruction. Muslims living in Alsace-Moselle can request exemption from those courses but do not (yet) have the opportunity to select alternative courses in Islam (Laurence & Vaisse, 2006: 142).
individuals (Baubérot, 2000). The Republican state, however, officially does not (financially) support exercises of faith, which is seen as conflicting with the second paragraph of the 1905 law. Religious groups must respect the law, renounce all claims to political power and refrain from intervening in public debates. In turn, state institutions must refrain from privileging any religious group over another or identifying with any religion in particular. Public officials have therefore a ‘devoir de réserve’ (obligation of restraint) and have only a few opportunities to be exempted from uniform rules on grounds of the freedom of conscience (Labourde, 2008).

Under the 1901 law permitting citizens to form voluntary organisations, religious groups are allowed to organise religious schools. They can apply for state funding through the Debré law of 1959. Private schools are allowed to retain their ‘particular characteristics’, but they may only receive state funding on the conditions that they teach the national curriculum (as in the Netherlands and Germany); provide only limited religious instruction; accept students regardless of ‘origin, opinion, or belief’; and allow all students to opt out from religious courses (Heylay, 1975). Currently, 20 % of all pupils in France visit state-funded religious schools, 90% of which are Catholic schools (Bader, 2007a: 161). Only one of the four existing Islamic schools in France (in Lille) receives state funding (other non state-funded Islamic schools are in Lyon, Aubervilliers and on the island of La Réunion in the Indian Ocean).

Although formally the French state does not recognise or subsidise religion, it has integrated and co-opted religious communities. From 1801-1905, France had a Concordatian state-church model that was based on the official recognition and funding of Catholic, Lutheran and Calvinist religions as ‘cultes’ (organised religions, not communities). In order to negotiate with such organised religions, the state recognised several interlocutors that still exist today and are officially contacted by the French Central Office of Religions in the Interior Ministry (‘Bureau Central des Cultes’). In addition to the Catholic Bishop’s Conference (‘Conférence des Evêques de France’, CEF), also the Jewish Consistory (‘Consistoire Central de France’, CCF) and the Protestant Council (‘Fédération Protestante de France’, FPF) were recognised as independent religious councils. This has resulted in several compromises, some of which conflict with the principles of secularism and equality. For example, the state continues to own and fund the maintenance and renovation of houses of worship built before 1905, which in practice benefits Catholic churches. This strategy of cooperating with and co-opting religious

52 A wide range of religious schools already existed prior to 1959 as so-called ‘free schools’. A 1919 law had allowed non-religious associations to apply for state funding (Bowen, 2007a). After WWII, public schools did not have sufficient space for the growing number of children. Moreover, private schools suffered from financial shortages. This contributed to the passing of the Debré Laws which recognised the current practice of state funding for religious schools. The right-wing party RPR in particular defended the public funding of religious schools (Delmas, 2006).

53 In fact, one of the recommendations of the Stasi Commission to President Jacques Chirac was to offer courses on Islam in Alsace-Moselle, as well as on the sociology of religion in French history and language lessons in public schools. It also tentatively conceded that no legal obstacles existed to the creation of private Islamic schools. These policy recommendations have not been institutionalized.

54 The Consistory consists of rabbis who are called on to resolve religious questions. An additional council, the Conseil Representatif des Institutions juives de France (CRIF) has existed since 1943. It is composed of intellectuals and activists who speak out on issues of importance to French Jews (Bowen, 2007a: 58).
groups in order to control religion is related to the ‘Gallican’ tradition of French state-church relations, in reference to early monarchical efforts to nationalise the French Catholic Church (Bowen, 2007a; Labourde, 2008; Maussen, 2009).

Since the 1990s, the Government has also attempted to establish a representative body for Islam in line with its existing institutional structure. In 2002, the French Muslim Council (‘Conseil Français du Culte Musulman’, CFCM) was established, representing only ‘religious’, mosque-going Muslims. The CFCM represents an estimated 10% of the 5 million citizens French citizens with an Islamic background (Laurence and Vaise, 2006). Those Muslim groups willing to organise and cooperate with the state therefore have some opportunities to influence policy debates on religious, non-political issues (Modood, 2007: 75). Muslim political associations, on the other hand, have no opportunities to lobby or influence stakeholders.

In short, French state-church relations are characterised by contrasting institutional logics. Firstly, the hands-off approach to religion (laïcité) is seen as a guarantee of religious freedom and non-discrimination. Further, a Republican principle argues that the state stands for a homogeneous, secular public realm. Citizens and religious communities are expected to compromise their religious identities and group claims in the public sphere and to conform to civic law. Nonetheless, this secular culture has been shaped by Christian compromises forged with the secular state. Lastly, state recognition and control of centralised religious authorities follows the Gallican principle: the neutral state is not indifferent to religion, but rather tries to bring religious groups under state control.

The Netherlands

The Netherlands has no constitutionally embedded principle of separation between church and state. In fact, the Netherlands has a long history of close cooperation between the state and various religious groups in politics, media, education, health care and more. Unlike Germany, however, organised religions have no public status and receive no public funding. Dutch state-church relations are strongly shaped not only by the highly valued principle of religious freedom, but also by the principle of equal treatment of different religions (Maussen, 2006). Monsma & Soper (2009) have described the Dutch state-church system as one of ‘principled pluralism’. State neutrality does not depend on strict separation or abstention, but rather is embodied in the ‘even-handed’ recognition of various religions by the state.

The institutional framework of Dutch secularism is reflected in both the 1983 Constitution and the Equal Treatment Act of 1994. Like in Germany, the Dutch right to freedom of religion, established in Article 6 of the Constitution, not only guarantees a

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55 In the French colonies, the state already attempted to create and support an official, moderate Islam in order to negotiate with moderate clerics and prevent the politicisation of Islam. During the Third Republic (1871-1940), France conquered various territories in West Indies, North and West Africa that were inhabited by Muslim populations. Islam was one of France’s officially recognised religions (‘cultes reconnus’) and brought under the control of the colonial government. But Muslims did not gain as much autonomy over their affairs as the majority, because the French state issued a special decree allowing it to fund mosques and Islamic schools, and to train and appoint religious personnel, even after the 1905 law cut financial ties between state and church (Maussen, 2009: 57-67). Until the independence of Algeria in 1962, the French government continued to finance, protect and foster a co-opted loyalist Islam, dubbed ‘the Islamic exception’ (Labourde, 1008).
citizen’s negative freedom of conscience, but also the ‘positive’ freedom to express and ‘live out’ one’s particular faith or ‘philosophy of life’ in public, either individually or in community with others. Moreover, it comprises a right to associational autonomy (Bader 2007a; Mausen, 2009). This means that the Dutch state does not follow a strategy of abstention, but rather recognises the valuable role that religion can play in civil society. Unlike France, it does not attempt to secularise the public realm; unlike Germany, it cuts the financial ties between state and church. The state no longer pays the salaries and pensions of clergymen, and religious groups no longer have the right to free postage or tax exemptions (van Bijsterveld, 2005). The Dutch government continues to support non-religious activities of religious foundations that organise as private associations, including mosque associations. The new Law of 2006 on Societal Development (Wet Maatschappelijke Vorming, WMV) covers the right of municipalities to subsidise religious organisations that play an important role in initiating social or cultural activities (Van Bijsterveld, 2005).

The right to equal treatment and non-discrimination is embedded in Article 1 of the Dutch constitution, as well as in the Dutch Equal Treatment Act. In contrast to France, the rights of individuals may be overridden by rights to religious freedom granted to a group. According to paragraph 5 of the Equality Act, for instance, a political party founded on religious principles may discriminate against members on grounds of religion, if these requirements are necessary to maintain the party’s religious views. The small Christian Orthodox party Staatskundig Gereformeerde Partij (SGP) has used this right to exclude female members from executive and representative functions within the party. It argued that its religion considers men and women to be created differently by God and hence to have received different roles and duties. The state not only allowed this treatment but endorsed it by funding the party like any other. Nonetheless, this extensive religious freedom right is recently being challenged, with European equality norms functioning as an opportunity for opponents to dispute subsequent discrimination. In 2007, for instance, a women’s rights group won a court order forcing the Dutch state to cease subsidizing the SGP, arguing that it facilitated the discrimination of women, which contravened constitutionally embedded principles of equality and internationally ratified human rights treaties. 56 Also the fact that public officers were long allowed to refuse to marry same-sex couples on grounds of conscientious objection has recently been successfully challenged. 57

Finally, Article 23 of the 1983 Constitution institutionalises freedom of education, establishing that private primary schools are subsidised on an equal footing with public

56 In 2007, a court in The Hague declared that the state had to discontinue subsidies because it facilitated gender discrimination by allowing the SGP to deprive passive voting rights for women. It argued that allowing women to be elected did not disproportionately restrict the Party’s right to freedom of association and religion, because it was still up to female party members to decide to actually participate in elections for public office. Even though the Dutch Council of State declared that state financing of this party was constitutional, the Highest Court endorsed the judgement of this The Hague Court in April 2009. The SGP will launch an appeal to the European Court of Human Rights.

57 In 2002 (ETC 2002-25; ETC 2002-26) the Equal Treatment Commission still reasoned that public officers had the right to religious freedom not to marry same-sex couples. The Commission considered it unreasonable to demand compliance with the law if there were other public officers available that could marry the couple. Six years later, it changed its opinion, arguing that the state could not enable public officers to discriminate against minority groups (ETC 2008-40).
schools state if the (religious) community meets certain financial conditions and educational standards.\textsuperscript{58} It forbids public schools from discriminating on religious grounds, insisting on ‘respect for everyone’s freedom of religion or belief’. This means that, upon parental request, they must provide the opportunity for pupils to take extracurricular or ancillary religious or Humanist courses, which are organised by private associations. The Law on Primary Education of 2010 stipulates that public education should reflect a pluralist society and familiarize students with the backgrounds and cultures of their peers. It also states that public education aims to encourage social integration and ‘active citizenship’. Hence, Dutch schools are seen as much more a part of civil society, with more parental involvement and multicultural education (Sunier, 2000).

Religious schools are attended by roughly 70\% of Dutch pupils (Bader, 2007a: 161). Most are Christian schools (Roman-Catholic, Orthodox Protestant, some Dutch-Reformed), many of which have lost their specific denominational colour and have become inter-confessional. There are also several fully state-funded Jewish, Hindu and Islamic schools, as well as others based on certain pedagogic or philosophical traditions. 46 Islamic primary schools have been established since 1988, along with two secondary schools and six higher educational institutions (Mijer, 2008). There is also an Islamic school board organisation, a pedagogic centre, two private higher educational institutions, and a national, state-sponsored centre for imams.\textsuperscript{59}

Religious schools have gained group rights that may override the individual rights of their members. In order to protect their particular denominational character, they may require that staff share their denominational or secular views (Zoontjes, 2003). This means that, unlike French private schools, Dutch private schools may directly discriminate on grounds of religion in their selection of pupils and staff and set certain requirements that, \textit{in view of the establishment’s purpose}, are necessary under its founding principles. The demands of conformity may be stricter for teachers, due to their special function in communicating a school’s values to pupils. But while discrimination on grounds of religion is allowed, this may not lead to discrimination on the ‘sole grounds’ of political opinion, race, sex, nationality, sexual orientation or civil status. There should always be additional circumstances, for instance the behaviour of the person in question, that make it impossible for an institution to appoint someone for the post of a teacher (Cremers-Hartman, 2004). In 2008, the Dutch Council of State advised the Government to reformulate the law by removing the ‘sole grounds’ criterion because it could lead to

\textsuperscript{58} The state does not define which religions are officially able to receive state funding; if a denomination has been recognised as ‘distinct’ from others and as ‘perceptible’, then it may lay claims to state funding for founding a school, provided that no other schools are in the direct neighbourhood and the target group is large enough.

\textsuperscript{59} In 2000, the then-Minister of Integration and City Policies, Roger van Boxtel, feared that Islamic schools were hampering the integration of Muslims in society by segregating them from native youth. He also declared that they were centres of conservatism or even radicalism, because teachers were having links with extremist countries and organisations. A committee of investigation of the Dutch National Security Service concluded in a report that only two out of fifty-two Islamic schools, board members had ties to any conservative Islamic organisations abroad. None of these schools were found guilty of teaching hatred and violence (see also: Kennedy & Valenta, 2008).
discriminatory practices against sexual minorities who tend to be fired when they are open about their same-sex relationship.\textsuperscript{60}

To sum up, Dutch state-church patterns provide favourable opportunities for Muslim minorities to claim equal rights and public recognition of their religious practices, which we might expect to lead to more accommodation of hijabs in public institutions than in France. One similarity with France is, however, that the Government has sought cooperation with Muslim groups, hoping to domesticate their religion by stimulating the erection of two Muslim Councils that were officially recognised in 2005 and structurally meet the Minister of Integration: the ‘Contactorgaan Moslims en Overheid’ (CMO) and ‘Contactgroep Islam’ (CGI). The CMO represents the largest Sunnite mosque organisations (approximately 560,000 Muslims). The CGI represents minority Muslim communities of the Alevi and Ahmadiyya (approximately 115,000 Muslims) (Van Heelsum et al., 2004). A similar interlocutor has existed since 1940, for Christian and Jewish groups (‘Interkerkelijk Contact in Overheidszaken’, CIO). Their members meet different Ministers to manage issues like spiritual care in prisons and the army, elderly care and the maintenance of houses of worship.\textsuperscript{61}

\textbf{Germany}

In Germany, citizens are also able to express their religion in (semi) public domains. Germany has no constitutionally embedded doctrine of demanding a separation of religion from the public sphere. In fact, religions are supposed to have a public dimension and can rely on state support. The neutral state does not discriminate against or favour any religion. But Germany’s church-state relations still institutionally favour historically dominant Christian churches in sectors such as education and social welfare. State-church relations have therefore been dubbed as ‘multiple establishment’, comparable to countries with state-churches (Monsma & Soper, 2009; Fetzer & Soper, 2005).

German state-church relations are characterised by, in the words of Federal Constitutional Court, a ‘limping’ (in German: ‘hinkende’) separation, meaning Germany is no laicist state (Mahlmann, 2003; 2005). Historically, the state closely cooperated with the Christian churches that ran most social welfare services and health agencies, which were operating as state churches at the Länder level. Over time, these intermediate organisations gained certain legitimacy in the management of public life (Morgan, 2002). After the Second World War, several institutionalised ties between church and state endured when the new Federal Republic tried to break with the fascist state of the National-Socialists. Religious intermediary organisations were seen as a way to avoid a dangerous, over-centralised government and a defence against moral and social fragmentation (Ferree et al., 2002: 77). In order to illustrate the boundaries of the new Federal Republic’s authority, the new constitution of 1949 opened with the reference “conscious of their responsibility before God and humankind” (Amir Moazami, 2007: 147).

\textsuperscript{60} This occurred after the European Commission had reprimanded the Dutch state for failing to implement the Equality Directive that obliges member states to protect people from discrimination in the field of labour. But in the advice of the State Council, private schools still got much leeway to require of teachers to hide their sexual orientation.

\textsuperscript{61} Representing twenty-six Catholic and Protestant churches and three Jewish organisations. In 1997 another Jewish Contact Council was established that lobbies the government on nonreligious matters, the ‘Centraal Overleg Joden’ (COJ).
Germany formally abolished its system of state churches. The constitutional secularism and neutrality of the German state was guaranteed by several legal norms. The right to freedom of religion is constitutionally embedded in Article 4 § 1-2 of the Basic Law and extends to people of all religious and non-religious faiths, including new religions, irrespective of size and social importance (Monsma & Soper, 2009). The norm has been interpreted expansively by the German Federal Constitutional Court, which has given it much weight in the German constitutional order of fundamental rights by linking it to the supreme norm of human dignity (Mahlman, 2003). Like in the Netherlands, religious freedom not only includes the freedom of belief but also the freedom to act upon one’s belief. It can only be restricted with reference to other constitutional rights. Religious groups have a positive freedom right to religion in that they can lay claim to state support. The Government funds faith-based social services on an equal footing with secular organisations and, in contrast to the Netherlands and France, also their religious activities. The Constitution even protects citizens’ right not to work on Sunday or publicly recognised religious holidays (Article 140) and the right to decline military service based on conscientious objection (Monsma & Soper, 2009: 109).

The neutrality of the state manifests itself in treating each religious and non-religious group equally in the public sphere, discriminating against none, as mandated in Article 3 § 3. Civil servants may not be refused on grounds of their religious or non-belief in public service: Article 33 §2-3 establishes that: “every German is equally eligible for any public office according to his aptitude, qualifications and professional achievements”, and that the “enjoyment of civil and political rights, eligibility for public office and rights acquired in the public service are independent of religious denomination. No one may suffer any disadvantage by reasons of his adherence or non-adherence to a denomination or to a conviction” (quoted from HRW: 17-18, footnote 49).

The 1949 Constitution incorporated several articles of the older Weimar Constitution of 1919, which secured cooperation between state and majority religions in several policy domains. Article 140 of the Constitution automatically granted the three main historical religious communities –Catholic, Jewish and Evangelical - legal status as public corporations (‘Körperschaft des öffentlichen Rechts’), giving them an elevated degree of autonomy from state intervention. There were also privileges, notably the collection of taxes through the financial authorities of the state (Fetzer & Soper, 2005).62 Article 140 also stipulates the conditions that other religious communities must fulfil in order to gain official recognition as public law corporations: they must have an official constitution, a substantial number of permanent members, and sufficient financial means. They must also show that they have existed for some time (generally thirty years), and that they respect the German democracy and state order (Jasch, 2007). The Länder Governments decide whether new religious and non-religious organisations fulfil these criteria.

62 These privileges included full independence in matters of employment, recognition of the community’s religious oath in a court of law, fiscal protection and exemption from real estate taxes on property designated as belonging to the public domain, automatic membership of the followers in the community and the right to receive a percentage of national revenue based on tax payers’ declarations of membership, and access to public radio and television councils: Jasch (2007): fn 106.
German state-church relations thus provide several opportunities for religious minorities to claim public space for religious expression on equal footing with Christian majority religions. The Jewish community, for instance, has been recognised as a public law corporation since the Second World War. Furthermore, because of Germany’s moral culpability in the Holocaust, Jewish organisations can lay claim to extensive state funding for their activities and houses of prayer: in 2003, the Federal Government officially established a long-term contract with the Central Council of Jews, with a yearly subsidy of €5 million (Berger, 2010). However, Länder Governments have thus far denied requests by Islamic and other religious minorities to obtain the status of officially recognised religions and public bodies, mostly because their democratic credentials were distrusted, or they failed to fulfil criteria such as a centralised organisational structure. Representatives of Islam do not have equal access to public policymaking either. Within the Federal Ministry of Education and Culture, a special Commissioner is responsible for representing the interests of the representatives of Evangelical, Protestant and Jewish communities (‘Beauftragte für Kirchen, Religions- und Weltanschauungsgemeinschaften’), and similar representatives exist at the Länder level. Muslims, however, have no representative councils that can be approached by the state. Only recently, the German Federal Government has started negotiations with religious and non-religious Muslims about the integration of Islam. In 2007, it launched the first round of the so-called Islam conferences. Hereafter, the four largest Muslim associations established the first national umbrella organisation in order to offer the state a central contact point, the Koordinationsrat der Muslime in Deutschland (KMD). The KMD has not yet been recognised, however, and its representation is disputed within the Muslim community.

Moreover, while Muslims have formal rights to offer Islamic courses in public schools, Länder governments have been reluctant to grant it. Article 7, §3 writes that religious courses are a compulsory part of the standard school curriculum of public schools. Religious instruction is considered a religious freedom right, both of pupils and

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63 Jehovah’s Witnesses, for instance, have been trying to get the status of public body since the 1990s. But state authorities argued that because the religion is not a democratically structured organisation (it forbids its members to vote or stand for public office), it could not be trusted because of its lack of democratic credentials and loyalty to the state (Barker, 2000). Finally, in 2006, the Jehovah’s Witnesses won a higher court case against the city state of Berlin and gained this status here.

64 In 2006, Minister of Interior and Integration Wolfgang Schäuble of the CDU-SPD cabinet (2005-2009) launched the first series of the Islam conference, entitled ‘Muslims in Germany- German Muslims’. There will be two plenary meetings a year under the presidency of the Interior Ministry, which sets the agenda for the meetings, whereas working groups meet at least six times a year. Issues that were discussed in the first round included the provision of Islamic courses in state schools, the training of German-speaking imams in German Universities, and the headscarf in public schools. Islamic extremism was also featured prominently the agenda (Jasch, 2000).

65 The four largest organisations are: the Islamrat für die Bundesrepublik Deutschland (IRD) (dominated by the Milli Görüs movement); the Zentralrat für die Muslime in Deutschland (ZMD); the Diyanet (which is affiliated to the Turkish government and the Türkisch-Islamische Union DITIB); and the Verband islamischer Kulturzentren (VIKZ).

66 This Article does not apply in Berlin or Bremen. The so-called Bremen clause, Article 141 of the constitution, exempts Berlin and Bremen, because different provisions were in place on January 1, 1949 when the new constitution went into force. In Berlin, religion classes are voluntary and administered directly by the various churches or philosophical organisations. Since 2010 pupils have been obliged to follow a compulsory course on ethics, administrated by the federal state. In
of parents, who have, according to Article 6 §2 of the German Constitution, the right to care for and raise their children according to their conception of the good life. The content of religious courses is a common responsibility of the regional state authority, which works together with the religious community in question (Monsma & Soper, 2009). By law, any religious community with sufficient students may offer religious education if it respects the principles of the German constitution. They must have systematised their membership in order to assess how many pupils are obliged to follow the course and must offer a central contact point for the Government (Jasch, 2007). But only in few states, Islamic courses exist. Some states - in cooperation with Evangelical and Catholic churches – offer different courses only for Christian denominations, allowing Muslim pupils either exemptions or other interdenominational studies in religion or ethics. Other states still offer Turkish language and society courses that also include religious elements, which were established during the guest-worker regime to enable children to retain ties to the homeland.67 Berlin and North Rhine-Westphalia now offer voluntary and compulsory Islamic religious instruction respectively, but only when in 2003 a Muslim religious organisation won its case at the Federal Administrative Court.

Moreover, Christianity still plays a fundamental role in several state schools in the South. In Baden-Württemberg and Bavaria, for instance, public schools (in German: ‘öffentliche Volksschulen’) used to be organised either as Christian interdenominational public schools (in German: ‘Christliche Gemeinschaftsschulen’ or ‘Simultanschulen mit christlichem Charakter’) or as confessional schools (‘Bekentnisschulen’). In the 1960s, most confessional schools became public schools, which officially became interdenominational in character. Nonetheless, most Southern public schools have retained their Christian character, incorporating Christian prayers and songs and crucifixes on school walls. Moreover, the constitutions of these states still stipulate that teaching Christian morals and values is part of the state’s educational mandate. When it came to court cases, the Federal Constitutional Court concluded that prohibiting prayers in public Bremen, the state administers so called ‘courses on Christian religions’ as part of the fixed curriculum.

67 Muslims were long seen as immigrant communities who would eventually return to their home countries (see chapter 5). German state authorities therefore considered the religious needs of Muslim immigrants to be an affair of migrants’ homelands. In 1984, the Turkish Government’s Office for Religious Affairs established a German branch, the Diyanet (DITIB), which fosters a Turkish state Islam and only targets Muslim children with Turkish backgrounds. It paid the salaries of imams who were trained according to secularist interpretations of Turkish Islam and set up religious courses in German school during so-called Turkish language and culture classes. These were organised during Germany’s guest-workers regime to foster children’s ties with their homelands in order to facilitate their return home. Some public schools in states like Bremen still offer such courses, which are only open for Turkish speaking pupils (Fetzer & Soper, 2005:113).

68 After a long legal battle that ultimately led to a positive ruling of the Federal Administrative Court, the organisation ‘Berlin Islamic Federation’ (‘Islamische Föderation’) was finally allowed to administer voluntary Islamic courses in public schools in 2000, and a ruling which later included Alevi Muslims (Fetzer & Soper, 2005: 115). The Islamic Federation in Berlin was initially not allowed to offer religious education because of the Federation’s alleged ties to Milli Görüs, an organisation that was expelled from Turkey in the 1980s for their ties to the Islamist Refah party of Necmettin Erbakan and that is under the supervision of the intelligence services because of possible relationships with the Muslim Brotherhood. The Ministry of Integration has forbidden two other Muslim organisations because of their alleged extreme activities: the Khilafet Devleti and the Hizb al Tahrir.
schools would disproportionately harm (Christian) pupils’ positive right to religion and their parents’ right to educate their children in light of their religious beliefs. The transmission of Christian-occidental cultural values during singing lessons, moreover, did not infringe upon the neutrality of the state. But the Court did rule in favour of Bavarian parents requesting the removal of crucifixes from classrooms. Because the children had no choice in being confronted with religion’s presence and message, the court argued that they must be removed for reasons of state neutrality upon parental request (Monsma & Soper, 2009: 195).

This extensive denominational influence on public schools may explain why only 4% of German schoolchildren attend private confessional schools. Any person or legal entity may establish private schools and lay claim to 70 to 90% state funding, so long as they comply with the law, do not discriminate on grounds of class and wealth, and offer education that is equivalent to that of public schools. So far, only two private Muslim schools exist, in Berlin and Munich (Lemmen, 2001).

In short, German state-church relations offer favourable institutional opportunities for Muslims to claim the right to wear headscarves in public as part of their religious belonging. The principle of equal treatment and the extensive nature of religious freedom provide a framework that should provide the same opportunities for Islamic religious expressions as it does for Christians. Nonetheless, since they lack public status, Muslim communities have fewer financial and cultural resources than Christian and Jewish religious groups. Monsma & Soper (2009: 187) conclude that “Evangelic, Catholic and Jewish faiths have certain advantages that other religious bodies and competing secular ideologies do not fully share”.

In all three countries, the rights to freedom of religion and equal treatment of religion are clearly embedded in laws. Nonetheless, in contrast to France, where the separation between church and state is a constitutionally embedded principle, German and Dutch state-church relations are interpreted in a non-secularist way, and strong reasons are required to justify state curtailment of religious freedoms. We may therefore expect more opportunities in these two countries to claim a religious freedom right to wear headscarves. A significant difference between Germany and the Netherlands is that the latter affords no public status to religion and has a longer history of institutionalised equal treatment of all religions. In Germany, Christian majority and Jewish minority religions are public bodies, receiving advantages over unrecognised “foreign” religions like Islam. In France and the Netherlands, organised Muslims do have some institutional access to state authorities, whose voices may be reflected in policy debates on the hijab.

4.2.3 Political allies for religious claims of recognition

In France, we may expect the Right to favour religious claims of recognition more than the Left. Even though the PS includes several moderate Catholics (Delmas, 2006: 28), it

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70 BVerfGE 93, 1 (May 16, 1995). The verdict triggered a storm of public criticism which only subsided when the court made clear that it had not argued that all public schools in Bavaria had to remove crucifixes from the wall, but only those in which students or parents register a complaint.
staunchly defended the secular state and the enforced private expression of religious collective identities in public. The Communist Party has been anti-religious for longer (Raymond, 2009). The RPR and UDF, in contrast, have historically attracted the majority of the Catholic vote (a Christian-Democrat party has never taken root in France). Although with the pacification of the religious cleavage since the 1990s, such voting behaviour has become more diffuse, we can still discern a difference between the Right and Left regarding issues of religion. When President Mitterand (PS) presented a draft law in the early 1980s to cut state subsidies to private religious schools, members of the RPR participated in massive demonstrations against the law, including the then-mayor of Paris, President Jacques Chirac (RPR). The conservative right-wing coalition Government of UDF and RPR (1993-1997) also attempted to reform the 1905 law by abolishing the 10% limit of state subsidies to private schools. This led in turn to a furious reaction from Socialist President Mitterand.

Both Socialist and right-wing Governments have, however, initiated official contacts with Muslim leaders since the 1980s in order to domesticate Islam and create a representative Muslim Council. It was the then-Minister of Interior Affairs, Nicolas Sarkozy (UMP), who established the first Muslim Council CFCM in 2003. President Sarkozy has also been in favour of positive discrimination on grounds of religion, trumpeting the appointment of the first ‘Muslim Préfet’ (the Algerian-born Aïssa Dermouche) in the Jura in January 2004, and baffling secularists with his welcome of Pope Benedict XVI to France in 2008, while emphasizing the nation’s close ties to Catholicism (Raymond, 2009). These actions triggered criticism from the Left (and within his own party) as conflicting with French secularism and as contributing to the collective ethnicisation of Muslims in France. Overall, political opportunities for religious recognition have thus improved since the turn of the century under the more moderate secular rule of the UMP.

In the Netherlands, the Christian Democrat Party and the secular Left will most likely defend the equal rights of Muslims to be recognised along with other religious and non-religious groups. The PvdA has integrated many progressive Christians in the 1970s, as has the Green Party. In contrast to the conservative Liberal party VVD and the liberal Democrat party D66, we may expect these parties to adhere to a more moderated secularist stance. The PvdA, however, also came out in favour of ending state subsidies to religion.

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Only during the Fourth Republic (1946-1958), one Christian Democratic Party existed (Mouvement Républicain Populaire, MRP). The MRP faced difficulty to win the votes of a conservative Catholic majority that remained fairly anti Republican. Leftists were too anticlerical to support the party. It disappeared after a change of the electoral system in 1958, which made it more difficult for smaller parties to enter parliament (Morgan, 2003).


Nundy, J. ‘Row over funding closes French schools’, The Independent (December 18, 1993).

Van Kersbergen (2008) argues that the religious cleavage in the Netherlands has transformed into a new cultural cleavage that can be differentiated into, first, a new communitarian cleavage that divides post-modernists (D66, VVD) from communitarianists (CDA). While the former stress the liberal rights of individuals, the latter stress the collectivity and conservative norms and values, rejecting the hedonism and individualist consumerism of their adversaries. Second, he observes an ethical cleavage that divides religious parties from liberal secular parties in regard to issues like euthanasia, same-sex marriages, and the right to abortion.
in the 1980s, with its members increasingly defending stricter separation between church and state (Maussen, 2006). We may expect the Dutch CDA to defend equal rights to religious accommodation of Muslims, considering Dutch state-church relations of even-handedness. It has historically been the champion of Dutch pillarisation, pleading for an emancipation of Muslims in line with that of the Catholic minority in the past (Maussen, 2006). Even though the CDA has recently also changed its position on Dutch pillarised multiculturalism, we may still expect several opportunities for hijab-wearing women to find political allies for their religious claims of recognition.

In Germany, both the secular Left and the Christian Democrat parties may defend Muslim women’s rights to express their religion in public. The class cleavage intersected with and moderated the religious cleavage and vice versa. The SPD lost its anti-religious standing in the 1960s, winning a substantial part of the Catholic CDU vote (Morgan, 2002) and endorsing the power base of churches in the provision of childcare and education (Monsma & Soper, 2009). Today, religious cleavages have lessened, and religious affiliations and practice no longer structure voting behaviour (Dogan, 2004: 13). Whether the Christian Union parties will defend Muslim women’s rights to freedom of expression depends on the extent to which they, along with Christian church interest-organisations, are willing to integrate Islam on equal footing as Christian religions, hence giving up some of their historical privileges. According to Fetzer & Soper (2005: 128), they will most likely defend the equal rights to religious freedom and recognition of religious Muslims: “Whether out of principle or self-interest, Christians are more likely to fight for state accommodation of Muslim’s religious practices in Germany, where church and state work together on various issues, than in France, where the institutions are rigidly separated”. The Liberal party FDP has been most critical of Germany’s corporatist state-church relations, for instance objecting to the right to levy church taxes (Monsma & Soper, 2009). But because this is only a small party, it will not likely have a large impact on the generally favourable political climate for religious claims of recognition.

4.3 Conclusion
This chapter has compared the state-church relations in the Netherlands, France and Germany. I expect the headscarf, when framed as a religious symbol, to be most politically contentious in France, where traditional cleavages over religion have been fierce. Religion and state also turn out to be most institutionally and ideologically separated in France, even though authorities have negotiated and co-opted religious groups in line with its Gallican state-church tradition. In Germany, state and church are most intertwined, granting Christian majority groups more power to influence policy debates than Islamic minorities, particularly in the realm of education. The Netherlands constitutes an intermediary case, where state and religion are two separate domains but where religious groups have significant access to public space and obtain state funding for their activities. Because of its institutionalised logic of even-handedness, we may expect most favourable opportunities for Muslim women to claim rights to religious freedom and expression to wear the hijab in public space. Table 2 summarises the findings and expectations for all three countries.
Table 2 Expectations regarding the POS for hijab-wearing women as religious actors

<table>
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<tr>
<th>State-church Patterns</th>
<th>France</th>
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<th>Expectations</th>
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<td>Religious cleavages pacified for nearly a century</td>
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<tr>
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<td>No institutionalised separation; neutrality as even-handed treatment of different groups; religious freedom both negative and positive right; religion plays role in public (school) realm. Cooperation with religious groups.</td>
<td>No institutionalised separation; ‘open’ interpretation of neutrality; religious freedom both positive and negative right; cooperation between state and only recognised religious groups; Christianity plays role in public (school) realm</td>
<td>Opportunities to claim rights to freedom of religion to wear headscarves in public institutions more limited in France compared to NL/ Germany. More institutional venues for organised Muslims in NL/ France to influence policy debates</td>
</tr>
<tr>
<td>Political allies for religious claims of recognition</td>
<td>Most support among RPR/ UMP, less among left-wing parties. Opportunities most favourable &gt; 2000 for religious claims of recognition</td>
<td>Most support among CDA, less among liberal D66 and VVD. Opportunities most favourable under CDA ruled coalitigovernments with PvdA, least under Purple governments (1994-2002)</td>
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</tr>
<tr>
<td>Expectations for each country on grounds of state-church patterns</td>
<td>Few opportunities to claim religious freedom rights to wear headscarves in public institutions. Much controversy expected if headscarf is framed in terms of religious cleavage</td>
<td>Favourable opportunities to claim religious freedom rights to wear headscarves in public institutions. Not much controversy expected if framed in terms of religious cleavage</td>
<td>Favourable opportunities to claim religious freedom rights to wear headscarves in public institutions but less in Southern states, where Christianity is privileged. Low saliency when framed in religious cleavage</td>
<td></td>
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Chapter 5. Governing immigrant integration and ethnic differences in France, the Netherlands and Germany

5.1 Introduction

This chapter further builds upon the empirical research that has compared different countries’ institutions and practices of citizenship, in order to explain the different ways in which states have responded to cultural claims to recognition by immigrants. This literature on citizenship practices and institutions (Brubaker 1992; Castles 1995; Favell, 1998; Entzinger 2005; Koopmans et al. 2005; Kastoryano, 2002) assumes that countries combining a multicultural approach with ius soli citizenship will be most favourable towards accommodating Muslim cultural and religious practices like the hijab. This chapter compares the citizenship and integration policies of France, Germany and the Netherlands since the mid 1980s, paying attention to the shifts in institutional logics over time, with the aim of stipulating expected opportunities and constraints that such institutional frameworks pose for the framing and regulating of the hijab as an expression of the religious culture of immigrants and their descendants.

However, I will not follow the classic distinction made by the majority of sociological studies on countries’ citizenship and incorporation policies, which often view religion as an aspect of immigrants’ ethno-cultural particularity and label countries as multicultural if they have accommodated immigrants’ religious needs. Even though Islam is ethnicised as a religion of aliens because of immigration, issues related to religion may evoke different normative, cognitive and institutional logics than those specifically related to ethno-cultural diversity (Koenig, 2003b: 160). In order to avoid repetition from the previous chapter, and to discern the specific institutional and ideological opportunities and constraints offered by countries’ citizenship and immigrant integration logics, this chapter only compares the ways in which states have granted civic, political and social citizenship rights to immigrants, recognising and accommodating ethnic minorities’ cultural and linguistic differences. I will rely upon some of the indicators developed by Koopmans et al. (2005), who compared five European countries’ citizenship and immigrant incorporation policies, but omit those indicators measuring ‘cultural’ rights specific to religion. As such, my comparison focuses on nationality acquisition (from liberal to restrictive rules, and civic and ethnic conceptions of citizenship); on anti-discrimination machineries (ranging from strong to weak legislation protecting citizens on grounds of race/ethnicity or national origin); on affirmative action policies to redistribute resources and power; and finally on the existence of representative councils for immigrant/ethnic minority interests.

This chapter starts with an analysis of historical cleavages arising from state formation and nation building, and how these have been dealt with. This cleavage is understood as a conflict between opponents and proponents of a homogeneous understanding of the nation based on a common ethnic origin. This common ancestry and shared origin can be constructed in multiple ways, through physical, linguistic, cultural or religious characteristics, or via shared historical events or myths (Verkuyten, 1999). If historical cleavages around national identity and belonging still divided political and societal actors when Muslim immigrants settled, we may expect that the hijab will become contentious once linked to nationality and ethnic diversity. After having analyzed each
country’s cleavage structure, I will examine their citizenship laws and immigrant incorporation policies over time. Finally, I will compare the availability of political allies for hijab-wearing women as migrant minorities claiming equal rights and opportunities while simultaneously claiming space for their multiple identities. I will elaborate upon the political embedding of the new cultural cleavage around immigration, ethnic differences and nationality as discerned by Kriesi et al. (2006). They argue that immigration and ethnic diversity are part of a new structural cleavage emergent in European national politics as the result of globalisation and the weakening of national borders. On one side of the political cleavage, we find parties defending open borders and multicultural policies; on the other we find parties perceiving immigration and cultural diversity as a threat to their national or cultural identity, and therefore defending tougher stances on immigration, law and order. If in a particular country there are many parties taking the latter stance, we may expect fewer opportunities for Muslim women to claim recognition for the hijab.

5.2 Citizenship and migrant incorporation patterns

5.2.1 Cleavages around national identity

French national identity is strongly shaped by the conflict between anti-religious revolutionary Republicans, with their commitment to the rights of man, and Catholic pro-monarchists, with their lingering dedication to the institutions and values of the ancient regime - known as a conflict between “the two Frances” (Bowen, 2007a: 23). This fault-line was particularly salient during the 18th and 19th century, when republican and monarchical forces found themselves struggling for a liberal, secular Republic and a Catholic Monarchy respectively, until the former finally managed to establish the Third Republic (1871-1940) (see also chapter 4). During the Dreyfus Affair (1898-1899) the nativism and anti-Semitism of the traditional, Catholic France came to the surface again, which also manifested itself in the rhetoric and policies of the Vichy government (1940-1944) that presented itself as a Catholic state that aimed to restore Christian values (Kuru, 2008). It replaced the Republican’s Universalistic credo of ‘freedom, equality, and solidarity’ by the credo of ‘work, family, homeland’ (Delmas, 2006). After the second World War, this cleavage between ethno-nationalistic Catholics and Republicans evaporated when the nation’s self-imaginary was firmly constructed around an ostensibly ethnicity-blind Republican Universalism. Up until today, France officially continues to deny the existence of ‘minorities’ on French soil, continually refusing to designate the Corsican people as an indigenous population. In 1999, it refused to sign the EU charter on Regional Minority Languages because of its opposition to the concept of ‘minority’ and ‘minority rights’.75

French Republican nationalism developed when Republicans dismantled the ancient regime in 1789 and, in opposition to the monarchy, which had privileged citizens

75 Regional minorities, such as those in Alsace, Brittany, the Basque country, Corsica, and Occitania, have continued to mobilise for the recognition of their particularistic cultures and identities, with the result that regional cleavages continue to exist up until today. Regional movements lost strength during the 1970s, and particularly after 1982 when France recognised linguistic differences in public schools by allowing optional courses. Federal and municipal entities also gained institutional autonomy and financial resources to sustain their regional culture (Delmas, 2006). Only a few radical movements are left (Duyvendak, 1995: 120).
on grounds of religious and regional differences, tried to win over the population by (re)defining the nation as a political, egalitarian entity with shared Enlightenment values of equality, freedom, and tolerance (Brubaker, 1992; Kastoryano, 2002; Schnapper, 1994). Universalism functioned as the glue to forge this new national unity in the midst of disparate regional, class and religious differences, and it helped safeguard the loyalty of the citizenry to the new Republic rather than the old Catholic monarchy. In theory at least, everyone belonged to the nation simply by virtue of being born on French territory, but was expected to give up particularistic loyalty claims. Particularly during the Third Republic (1871-1940), the French nation-building project based upon the ideals of French Universalism gained in strength. The state ‘turned peasants into Frenchmen’ through compulsory secular schooling and military service, aiming to flatten linguistic, regional and religious differences (Weber, 1976). Even though regional identities were occasionally recognised as folkloristic expressions of national identity, or as inherent parts of French mosaic (Thiesse, 2001), all regional aspirations for autonomy were repressed and regional languages were banned from public institutions.

Although French Republicanism is usually categorised as ‘civic’ or ‘territorial’ nationalism, another ethno-nationalistic reality existed: the Third Republic was also the era when France embarked upon its imperialist colonial endeavour as it attempted to ‘Frenchify’ colonial subjects (Asad, 2006). Nonetheless, Muslim subjects in French colonies (‘sujets Français’) could not gain full citizenship status and were excluded from the nation unless they gave up their religion-based customs, if not their faith itself. Because of their perceived intrinsic cultural difference, Algerian Muslims were considered “indigènes” - members of an Islamic community - and they therefore were subject to the legislative ‘Code de l’Indigénat’ (1874) rather than the French Civil Code. By contrast, Algerian Jews were naturalised as full citizens with the Cremieux Decree of 1870, gaining automatic citizenship in 1889 together with all Europeans born in Algeria. Only in 1947 was this legal inequality between full and secondary citizens abolished, when Algerians became citizens of the French Union through the ‘citoyens de statut local’ (Maussen, 2009). They retained their unrestricted right to migrate to France until the Evian Accords ended the bloody Algerian Independence War and Algeria became an independent state (1954-1962).

After the Second World War, and with the horrors of the Vichy era in mind, France officially returned to the idea of a nation consisting of abstract individual subjects, all interchangeable and thus equal. It refused any discrimination along racial and ethnic lines

76 The granting of birthright citizenship to Jewish minorities in 1789 is often taken as an example of this demand to renounce particularistic collective identities in exchange for being allowed to join the nation. As Count Stanislas Cerlmont-Tonnerre declared in 1789: “Everything must be refused to the Jews as a nation in the sense of a corporate body and everything must be granted to the Jews as individuals[…] They must make up neither a political body nor an order within the State; they must individually be citizens” (quoted from Scott, 2007: 75). In reality, certain categories were still excluded from full membership in the polity on grounds of gender, age, place of birth and ethno racial ancestry.

77 During the Third Republic (1871-1940), France conquered various territories in the West Indies, North and West Africa that were inhabited by Muslim populations, including Algeria in 1830 (organised as three departments of France in 1848 and becoming part of metropolitan France in 1881), Tunisia in 1881 and Morocco in 1907. The latter two remained semi-autonomous protectorates. See: Maussen (2009).
by denying the existence of such categories. Immigrants could become citizens, regardless of ethnic origin. Due to the pacification of historic fault lines around the nation, with ethno-cultural differences negated in a homogeneous Republican national culture, we may expect it is difficult to mobilize the headscarf as a symbol of (in)compatible cultural differences between ethnic French and migrant minorities.

**Dutch** nationality was not widely discussed until the 1990s (Lechner, 2007). Rather than integrating citizens into a Universalist ideology of conflated differences, or into a Völkish nation, the Dutch nation had historically comprised various religious and political groups, its collective identity shaped by a corporatist history of pillarisation (‘verzuiling’, 1917-1960). Pillarisation refers to the division of Dutch society into religious and ideological groups during the first half of the 20th century (see chapter 4). In contrast to France, individual citizens were incorporated into groups whose different ideologies could be equally manifested in public space. The Dutch primarily identified themselves as members of different religious and ideological groups represented by the elites of these groups – the Catholic, Protestant, Socialist and Liberal communities – who together regulated social life. Such pillarising resulted in a consociational democracy functioning to sustain societal peace (Blom, 2000; Lijphart, 1968).

Dutch nationality thus never split society along oppositional fault lines, because the nation had consisted of several minority groups whose differences were institutionalised but who shared a ‘thick’ understanding of Dutchness based on implicitly shared cultural codes (Ghorashi, 2003). This shared culture implicitly bridged the various pillars and regional minorities, but it separated the native Dutch from their colonial subjects in the overseas territories. With the establishment of the Independent Kingdom of the Netherlands in 1814, former Dutch sea-trading posts in present day Indonesia, Surinam, and the Dutch Antilles were turned into colonies. When the Dutch East Indies became part of the Dutch monarchy, it turned into the ‘largest Muslim country on earth’ (Van der Veer, 2002). Here, Susan Legène (2009: 234) writes, “the religious and political divisions of the pillarised society were not relevant. The colonialists were all members of a white elite, a minority in the colony.” While formally classified as Dutch nationals, colonial subjects were secondary citizens never fully belonging to the nation; in 1838, colonial subjects gained Dutch citizenship based upon their birth on Dutch soil, but they were deprived of political rights in 1850 (Heijs, 1995). Under a new citizenship law of 1892, the indigenous population of the Dutch East Indies were formally excluded from Dutch nationality, and in 1910, they received a ‘second rank’ Dutch nationality (‘Nederlands onderdaan niet-Nederlander’) (Heijs, 1995).78

After the de-colonisation of the Dutch East Indies (1949-1962), approximately 312,500 Dutch citizens moved from the Indonesian Archipelago to the Netherlands, including 200,000 Eurasians (Dutch of mixed descent), 100,000 ‘totoks’ (white Dutch settlers), and 12,500 Moluccans (Jones, 2009: 6). They were followed in the 1960s by recruited labour-migrants from Italy, Spain, Portugal, Turkey and Morocco and after 1975

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78 Colonial subjects who were excluded from Dutch nationality included so-called ‘Oriental Foreigners’ (Chinese and other Asian inhabitants) and ‘Natives’ (or ‘Inlanders’, the native population) (van Oers, 2006: 393). The indigenous inhabitants of the colonies of Surinam and Curacao (Dutch Antilleans), by contrast, were Dutch nationals since 1832. They kept this status on grounds of ius sanguinis after the introduction of the new citizenship law of 1892, in contrast to children of labour migrants from the Dutch East Indies who continued to be excluded from full citizenship (Heijs, 1997: 71-72, 144-146).
by post-colonial immigrants from Surinam. Since the 1980s, the immigration of Dutch citizens from the Dutch Antilles and Aruba, which retained an autonomous status within the Dutch Kingdom, has also increased (Ersanilli, 2007). Gradually, the different shades of whiteness between Dutch citizens became visible, and the nation was forced to reinvent itself. Initially, this pluralisation of the nation was accompanied by little national soul-searching (Lechner, 2007). Labour-migrants turned citizens and were tolerated as separate ethnic groups in a depillarised society79 priding itself on not being nationalistic but instead being part of a global community.

Due to the absence of historical cleavages around national identity in the Netherlands, with minorities’ ethno-cultural differences being recognized and institutionalised as separate parts of the nation, we may expect a low saliency of the headscarf issue.

In contrast to France and the Netherlands, ethnically articulated conflicts over German national identity were not settled in the late 20th century. German nationalism is often portrayed as a classic example of an ethno-cultural understanding of the nation, attaching citizenship to shared ethnic descent. It is located in the late nation-building process of Germany - a ‘nation searching for a state’ (Brubaker, 1992; Kastoryano, 2002). Prussian nationalists, who also embarked upon a colonial enterprise80, tried to forge national cohesion by cultivating some of the vaguely national spirit which had existed among the elites of the forty autonomous kingdoms of the North German Confederation before the 1871 establishment of the German Empire. In opposition to French Universalism, they based their nationalistic project on Romantic ideals of a ‘Volksgeist’ uniting people through an imagined common German spirit, culture and Christian heritage. While emigrants living outside the national territory could lay claim to citizenship as members of the German people, Polish and Jewish immigrants faced harsh anti-immigration policies and were perceived as ‘alien to the people’ (‘Volksfremde’) (Schönwälder, 2008), including Catholic Poles living within the boundaries of the empire and enjoying formal citizenship status (‘Reichspolen’) (Ulrich, 2003). Ethnically and religiously articulated conflicts over nationality temporarily quieted with the emergence of an independent Polish state (1918-1939). Also Frisian and Danish minorities in the North gradually attained a status as national minority groups whose culture and language are still constitutionally protected, a status which has also been granted to those national minorities who suffered under Nazi persecution, such as the Roma and Sinti (Kriesi et al., 1995).

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79 The pillarized society fell apart in the 1960s due to increasing levels of de-confessionalisation and individualisation of Dutch society, as well as the development of a welfare state that decreased the need for citizens to rely on their own communities’ institutions (van Kersbergen, 2008; Rath et al., 1996).

80 Between 1884 and 1900, the German Reich gained an empire in Africa and the Pacific of approximately 12 million inhabitants. In Africa, it had Deutsch Ostafrika (partly present day Tanzania, Rwanda, Burundi); Deutsch Südwest Afrika (parts of present day Namibia and Nigeria); Deutsch West Afrika (parts of present day Cameroon) and Deutsch Togo (Republic of Togo and part of Ghana); and Südrand des Caprivi-Zipfels (Botswana). In the Pacific, it had German New Guinea (Papua New Guinea and the Republic of the Marshall Islands) and various other islands like present day Western Samoa. The leased Chinese region of what Germans called Deutsche Kiautschou (Kiao Chiow,) is today called Jiaozhou and Tsingtau is today Qingdao City (Wildenthal, 2001).
Nonetheless, ethnically articulated conflicts around nationality reappeared after the Second World War, when millions of ethnic Germans lived outside the country’s new territorial borders, where they suffered discrimination and persecution (Özcan, 2007). In order to protect these German emigrants (‘Aussiedler’) or ‘late emigrants’ (‘Spätaussiedler’), the post-war constitution of the FRG recognised them as members of the German Nation (‘Auslanddeutsche’ or ‘Volksdeutsche’), able to claim citizenship on the grounds of their common ancestry (see below). Furthermore, the Cold War resulted in a national division into two separate states - the Federal Republic of Germany (FRG) and the German Democratic Republic (GDR). Both historical events contributed to sustaining an ethnic concept of the nation that largely excluded ethnic migrant minorities as citizens.

Ethnically articulated cleavages around nationality have continued to shape political debates in the FRG until well into the 1990s. All attempts to further open up citizenship rules for ethnic minorities who arrived as labour and family migrants failed, while ethnic Germans and their descendants continued to have privileged access to German nationality as victims of post-war measures. Their immigration continued to increase between 1950 and 1987, peaking after the fall of the Iron Curtain in 1989 when Germans from the former BRD moved to the West and German emigrants and Jews from Eastern Europe immigrated to the unified state (Hirschler-Horakova, 2003). Only after the fall of the Iron Curtain did the cherished ideal of an undivided ethnically homogeneous nation evaporate, and national cleavages relaxed as well.

Due to the ethnicisation of post-war German politics, we may therefore expect debates about the hijab in Germany to be most intense when linked to ethnic differences and the nation. There exist strong ethno-nationalist voices that reject the accommodation of cultural differences of migrant minorities as part of the nation. In France and the Netherlands, ethnic cleavages were not salient in contests of national identity; ethnic differences were officially played down, if not ignored, by the homogeneous French nation, whilst being institutionalised in the Netherlands as distinct parts of the nation.

5.2.2 Laws, policies and governing strategies regulating migrant incorporation

Citizenship policies

France has historically practiced open citizenship, which is seen as an instrument of integration into society and to becoming culturally ‘French’ (Brubaker, 1992; Weil, Spire & Bertossi, 2010). French nationality is a combination of the ‘ius sanguinis’ and ‘ius soli’ principles: It is attributed at birth (irrespective of place) if one of the child’s parents is French, or if the child is born in France and also has a parent born in France. While citizenship was initially passed through the father, since 1973 all gender discrimination has been removed from nationality legislation.

81 Spätaussiedler were ‘Germans’ who had migrated already before the emergence of the German nation-state to the Russian empire for work. Because they suffered from repression and discrimination during and after WWII, Germany facilitated their ‘return home’ by granting them automatic citizenship on grounds of the pre-war 1913 citizenship law, which was transposed in Article 116 of the Federal Republic’s Constitution of 1949 (Michalowski, 2007: 36 fn. 27).

82 While the Western Federal Republic of Germany signed bilateral contracts with Italy, Greece, Spain, Turkey, Morocco, Portugal, Tunisia and Yugoslavia, the German Democratic Republic recruited labour force from allying socialist countries, such as Poland, Hungary, Mozambique and Vietnam (Özcan, 2007).
Since 1889, when France introduced the ius soli principle, third-generation immigrant children become French at birth. A child born in France whose parents are neither French nor born in France (hence second generation) automatically becomes French when they reach majority, as long as they have resided in France for a period of five years after the age of eleven and still reside there at the time of application.

In 1993, the right-wing Gaullist and Liberal Government restricted this ius soli component by demanding the ‘voluntary consent’ of children born in France to foreign parents when accepting French citizenship. This was because the cultural difference of Maghrebians was seen as an obstacle for their integration into French society (Weil, Spire & Bertossi, 2010). Moreover, children born in France to parents born in former French colonies other than Algeria lost their specific rights to automatic citizenship at birth. They thus had the same status as anyone born in France to foreign parents. Only four years later, however, the new left-wing Government reinstated automatic citizenship for children born of foreign parents in France. But rather than removing the principle of consent, the Government reversed the logic by automatically granting citizenship to French-born children of migrants unless they opted out when turning 18. This was primarily motivated by children of Algerian parents who rejected the automatic acquisition of French nationality as treacherous to their parents. The core idea that one could become French regardless of ethnic background has remained the same.

France has also relatively relaxed thresholds for naturalisation. People born abroad but living in France can acquire citizenship if they have lived there for at least five years, though they may not depend on social welfare. A certain degree of assimilation is expected. Already since 1945, Article 21-24 of the French Civil Code states that ‘assimilation into the French community, primarily by sufficient knowledge of the French language is a requirement for naturalisation’. Civil servants determine in a personal interview with the applicant whether the candidate possesses sufficient knowledge of French language and values to be eligible for naturalisation (Ersanilli, 2010: 29). Yet, immigrants do not need to renounce dual citizenship. In contrast to the other two countries, this is hardly disputed (Weil & Spire, 2006).

Recently, naturalisation requirements have become more demanding. With the passage of a new Migration Act in 2006, foreigners who wish to take up permanent residence must sign a special ‘integration contract’ (‘contrat d’accueil et d’intégration’, CAI). In exchange for migrants’ promising to abide by the law and to integrate, the state offers free language courses and tutoring on civic rights and obligations. Migrants must have participated in those courses in order to obtain a ten-year residence permit, otherwise they only get a one-year renewable permit (Laurence & Vaisse, 2006: 189). Moreover, in 2007, a law was adopted restricting family reunification. Migrant families’ access to France is conditional on their knowledge of “the language and values of the Republic”. The law also states that polygamy or female genital mutilation of children constitute a ‘fault of assimilation’ (Weil, Spire & Bertossi, 2010). Should an applicant’s evaluation reveal insufficient knowledge, the applicant will be obliged to participate in a course, organised and financed by the Government. In contrast to Germany and the Netherlands, admission to France is conditional upon participation in the evaluation and course, not

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83 Because their parents had been French before the decolonisation of Algeria in 1962, they were automatically French at birth. With the 1997 law, they continued to have the opportunity to renounce French nationality.
upon achieving a certain level of knowledge, and the law does not differentiate between Western and non-Western family migrants.\textsuperscript{84} Upon arrival, their level is again evaluated to decide upon the level and length of the course belonging to the ‘integration contract’.

In the Netherlands citizenship has likewise been based on a combination of ius soli and ius sanguinis. Third-generation immigrants gained automatic citizenship in 1953. This right was briefly questioned in 1981, but has not been changed (Heijs, 1995). Citizenship was further opened up in the 1980s when the Government recognised the Netherlands had become an immigrant country.\textsuperscript{85} In 1985, children of foreigners born in the Netherlands gained the right to opt in for Dutch nationality between the ages of 18 and 25 (in contrast to France, where the onus is on opting out). The maximum age of 25 was withdrawn in the year 2000. Only since 1985 has there been total gender equality in the transmission of citizenship to children at birth and in the acquisition of Dutch nationality for foreign men and women marrying Dutch nationals (Oers et al., 2006; see also Bonjour, 2009; de Hart, 2003 and van Walsum, 2008 on Dutch family migration policies).

Until 2003, there were no obstacles to the naturalisation procedure of second-generation immigrants born in the Netherlands. The new Dutch Nationality Act of 2003, however, requires that second-generation immigrants opting for citizenship must undergo a public order investigation. As in Germany, applicants are denied if they have been convicted for certain crimes (van Oers et al., 2006). In contrast to the children of native Dutch, the loyalties of Dutch children with foreign backgrounds are thus questioned.

The Netherlands has historically required immigrants to assimilate to a certain degree in order to become naturalised. Until the mid-1980s, when citizenship was further opened up, applicants’ degrees of civic integration had been screened by local authorities. Immigrants had to prove knowledge of the Dutch language and people, and that they had resided in the Netherlands for five years, before being granted a passport. Moreover, their family situation and ‘moral and social’ behaviour was evaluated (Heijs, 1995). Immigrants seeking naturalisation must also renounce dual citizenship. Between 1992 and 1997, this formal renunciation requirement was temporarily withdrawn (van Oers et al., 2006). But the prohibition of dual citizenship was quickly reinstated and has remained a contentious issue ever since.\textsuperscript{86} Officially, only immigrants who have acquired citizenship by option (that is: second generation) can retain their previous citizenship but in reality many exemptions are also made with regard to the double citizenship of naturalised migrants (Ersanilli, 2010).

In 1998, the Netherlands was the first country that passed a law on Civic Integration (‘Wet Inburgering Nieuwkomers’, WIN). It obliges migrants from outside the European Union who have both lawfully resided in the Netherlands for five years

\textsuperscript{84} Code de l’entrée et du séjour des étrangers et du droit d’asile (CESEDA) L211-2-1. The law writes: “Those exempted from this requirement include: people aged under 16 or over 65 years old, foreigners who have studied for at least 3 years at a French secondary school or at a francophone school abroad, foreigners who have studied for at least one year at a higher education establishment in France.” Pascouau (2011), fn 12.

\textsuperscript{85} In 1979 the Dutch Scientific Council for Immigrant Policies (‘Wetenschappelijke Raad voor Regeringsadvies’, WRR) warned the government that it had to develop more active integration policies to prevent the socioeconomic deprivation and cultural isolation of migrants. An academic commission of experts also argued that the government could no longer deny that the Netherlands had become an immigration country. Hereafter, the government started developing active integration policies.

\textsuperscript{86} ‘Ook VVD-lid heeft dubbele nationaliteit’, Volkskrant (October 25, 2010).
consecutively and maintained economic self-sufficiency to attend a naturalisation course in order to become Dutch.\textsuperscript{87} This consists of an oral and written language exam with questions on Dutch politics and culture, with the stated aim to foster migrants’ integration into Dutch society (Entzinger, 2005; Joppke, 2007).

In December 2006, Parliament adopted a new Civic Integration Act (‘Wet Inburgering’, WI) replacing the previous Act of 1998. It obliges newly arrived migrants, as well as refugees with the right to asylum, to pass a civic integration exam in order to gain permanent residency (rather than for naturalisation). Unlike in France, migrants must pay for the costs of the classes (which are not compulsory) and the test themselves. Moreover, resident migrants between the ages of 16 and 65 who have not received Dutch education for at least eight years and who lived in the Netherlands prior to 1 January 2007, are also obliged to pass the test, as are refugees and clergymen from outside the EU. This last requirement indicates that foreign imams are seen as hindering the integration of Muslims in Dutch society. Several specific groups of naturalised citizens must also take the exam, such as new Dutch nationals who receive welfare benefits. Rather than voluntary participation in courses (as in France), passing the exam is mandatory in order to be eligible for a permanent residence permit and to continue receiving welfare benefits (Spijkerboer, 2007; Vink, 2007).\textsuperscript{88}

In March 2006, the Netherlands was the first country where a new Civic Integration Abroad Act (‘Wet Inburgering Buitenland’, WIB) went into force. It obliges would-be family migrants applying for a temporary residence permit to pass a language and integration test in their homeland (both spouses and children of 16 and 17 who are no longer required to attend school), but only from certain countries. Citizens of the European Union and European Economic Area states, of Switzerland, New Zealand, Australia, Canada, Japan, South Korea and the United States are not required to take the exam. They must pay the €350 costs of the course material and exam themselves. If they fail, they do not receive a visa until they pass another test (Pascouau, 2011). From the information video accompanying the preparatory material, which contains scenes of homosexual couples and nudist beaches, it also becomes clear that knowledge of Dutch liberal sexual norms is mandatory to enter the Netherlands (Michalowski, 2010). Moreover, family members in the Netherlands must demonstrate they have a long-term labour-contract and earn sufficiently to support themselves and new immigrant. Becoming familiar with Dutch liberal culture is thus a condition for both citizenship and denizenship, with particularly immigrants from ‘non-western’ countries wishing to join family members or spouses in the Netherlands being seen as a problematic social-economic and culturally deficient category.\textsuperscript{89} This may explain why several authors have pointed out the paradigm shift that

\textsuperscript{87} In 2010, a Dutch court ruled that also two Turkish nationals - who objected to taking and paying for the (rather expensive) integration courses - could not be obliged to follow the courses due to the existence of special agreements between Turkey and the EU regarding the access of Turkish nationals to the labour market: ‘Rechter: Turken hoeven niet verplicht in te burgeren’, Algemeen Handelsblad (August 15, 2010).

\textsuperscript{88} The initial proposal to also include Dutch nationals from the Antilles and Aruba (and naturalized clergymen) was dropped after the Council of State argued that differentiation between native and new Dutch nationals contravened international and constitutionally embedded human rights to equality (Spijkerboer, 2007: 43).

\textsuperscript{89} In May 2008, Human Rights Watch declared the Wib to be discriminatory on the basis of international human rights law, which forbids countries from making distinctions based on
the Netherlands has observed from multiculturalism to assimilationism after the turn of the century (Entzinger, 2003; Joppke, 2004; Scholten, 2008; Sniderman & Hagendoorn, 2007).

In Germany, citizenship acquisition was solely based on the ius sanguinis principle until 2000. German-born immigrants who could not prove German descent had difficulty applying for German citizenship. The naturalisation guidelines stated that citizenship was only granted if applicants proved a ‘voluntary and permanent commitment to Germany […]] judged from (the applicant’s) fundamental attitude with regard to the German cultural realm. A permanent commitment is principally not to be assumed when the applicant is active in a political emigrant organisation’ (quoted from Ersanilli, 2010: 33). Moreover, non-ethnic German immigrants had to relinquish their primary nationality in order to become German.

This closed citizenship for non-ethnic Germans, in contrast to the open citizenship policy for migrants of German descent. In order to enable German (post-) war refugees’ return to their homeland, Article 116 of the FRG post-war constitution incorporated a 1913 citizenship law recognising people with German nationality as German citizens, as well as migrants belonging to the German ‘People’ (‘Volkszugehörigkeit’). In order to be considered a German emigrant, one had to prove descent from an ethnic German, and adherence to the German nation, which could be shown by the use of German language within the family. Also, spouses and descendants of German emigrants considered victims of persecution under post-war measures in Eastern and Central Europe were entitled to naturalisation. After the fall of the Iron Curtain, when Germany witnessed large streams of immigrants from the East, conditions became more stringent for German emigrants. In 1993, the Government introduced a quota system and a language test, in order to prove ethnic Germanness. Since 2000, non-German relatives and descendants of German repatriates have required certificates of German language skills before being granted citizenship and entrance into German territory (Hailbronner, 2006).

In 2000, a new citizenship law came into effect introducing the ius soli principle, automatically naturalising foreign children born on German soil. While this seems more open than Dutch and French citizenship policies, where foreigners’ children must still opt out and opt in for nationality once they turn eighteen, the criteria automatic citizenship upon birth are higher: at least one parent must have lived in Germany for at least eight consecutive years and must hold a permanent residency permit. Moreover, children must relinquish their parents’ citizenship before the age of 23 or lose their German nationality (Ersanilli, 2010). Because of those conditions, only 40 % of children born to foreign parents in Germany automatically receive German nationality (Özcan, 2007).

Naturalisation requirements for migrants in Germany are also more demanding than in France and the Netherlands. In 1991, the CDU-FDP Government decided that non-ethnic migrants could claim citizenship after 15 years of lawful and permanent residency in Germany, or 8 years for minors aged between 16 and 23 (who had completed at least 6 years of school in Germany). They had to renounce their former nationality and identify with German culture, could not have been prosecuted for a criminal offence and had to

ethnicity or nationality in their immigration policies. It would indirectly violate the rights of citizens from Turkish and Moroccan backgrounds to family reunion, since the law explicitly targets migrants from certain (‘non-Western’) nationalities and also indirectly discriminates these two groups –and particular women - whose social-economic status makes it harder to fulfil the income requirements: Human Rights Watch (2008), *Discrimination in the Name of Integration*. 

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demonstrate an ability to earn a living (Ersanilli, 2010; Hailbronner, 2006; 2010). Naturalisation could thus be seen as a favour, dependent on the wish and will of (local) state authorities. In 1993, naturalisation became a right for migrants, and under the 2000 law, migrants no longer need to prove a commitment to the German culture. Instead, they must declare loyalty to the German Constitution and fulfil certain language requirements. Moreover they can now apply for citizenship after 8 years of permanent residence. This illustrates a change of perception, with naturalisation and citizenship for immigrants now being considered in the German public interest. However, applicants must not have a criminal record, and they may not receive welfare benefits or maintain their previous nationality. Exceptions are made for citizens from EU member-states that allow for dual nationality. Since 2007, they no longer need to renounce their previous nationality (Hailbronner, 2006; 2010).

With the Immigration Act of 2004, implemented on 1st January 2005, requirements were tightened again. Migrants have to participate and – as in the Netherlands – successfully complete a civic integration course in order to be eligible for naturalisation. The course consists of a language component and a class on of the basics of German history and politics (Hailbronner, 2010). Applicants must not be engaged in unconstitutional political activities and, unlike France, are subject to expulsion for terrorist affiliation (Michalowski, 2007). Security considerations resulting from post-9.11 anti-terrorism legislation have thus shaped immigration laws.

Finally, Germany has also restricted family migration, including for (non-ethnic German) relatives of German emigrants. Foreign spouses can acquire German citizenship through marriage, after two years of marriage and a residence permit of three years, and must renounce their original nationality (Hailbronner, 2006). Since an amendment of the nationality law was put into effect on July 15, 2007, spouses of Germans living abroad must be able to make themselves understood in German at a basic level before they are eligible for a residence permit. They can submit a certificate from the famous Goethe Language Institute, or they may demonstrate their knowledge in a personal interview with staff at German embassies and consulates (Pascouau, 2011). This requirement does not apply for nationals of the EU and countries like the USA, Canada, Japan, and South Korea, or for the spouses of highly educated professionals, such as academics. The law thus seems to be designed to select predominantly skilled immigrants by targeting poorer families of Turkish immigrants in Germany (Michalowski, 2010). This is reinforced by the fact that Germany, unlike France, does not offer free language classes in the country of origin.

To summarise, due to different nationality legislation, most Muslim immigrants to France or the Netherlands are already nationals of those countries, in contrast to German Muslims who were long excluded from political citizenship rights. Yet in all three countries a convergence has occurred, with France and particularly the Netherlands putting up higher cultural and linguistic boundaries to the acquisition of nationality for foreigners – boundaries that already existed in Germany, which grants nationality based on place of birth.

Integration policies
In 1981, the Socialist Government of France first developed integration policies to improve the position of immigrants in France. Even though some left-wing politicians temporarily recognised immigrants’ ‘right to be different’ (‘droit à la différence’), the
Government never officially adopted a policy of recognition. In exchange for migrants’ willingness to integrate into a common Republican democratic culture, the state promised them equal rights and the benefits of social inclusion. Immigrants gained the right to establish their own associations and to apply for subsidies in 1981. Since then, the established religious and class-based associations that had regulated immigrant incorporation had to compete with immigrants’ own associations for government subsidies (Ireland, 2000). The Government also strengthened immigrants’ protection against administrative abuse and deportation without due process, streamlining the residence permit system (Ireland, 2000: 238). Nonetheless, President Mitterrand never made good on his 1981 promise to give immigrants the right to vote in local elections, and political rights continued to be attached to French nationality.

The national government has no organised way of consulting immigrants about policy decisions, neither integrating them into advisory bodies nor involving them in the implementation of Government policies (MIPEX, 2010). Even though ad hoc meetings do occur, the government has a hand in the selection of participants and only cooperates with associations loyal to its agenda. In 1989, a consultative body on immigrant integration was installed - the High Council on Integration (Haut Conseil d’intégration, HCI). This body, however, does not include representatives of ethnic minorities per se, but rather “experts” on immigration and integration issues. It makes proposals and launches yearly research reports on integration issues, but it has no regulatory or legal powers.

Since its inception, the HCI has continued to legitimise the colour-blind approach to French integration policies. According to Bertossi (2007: 7), ‘It is the guardian of the Republican tradition in its most conservative form’. Illustrative of the stress on the uniformity of the citizenry is the HCI’s first report, issued in 1991, which states that ‘the French conception of integration should obey a logic of equality and not a logic of minorities’ (cited in Poulter (1997): 51). In its 1995 report, the HCI wrote that immigrant cultures do not need to become extinct, and may even ‘be a factor of integration’ (quoted from Labourde, 2008:190). Yet, it was not the responsibility of the state to cultivate such cultures or to grant minorities rights of special political representation. By contrast, immigrants would automatically be socialised into mainstream culture through their exposure to national institutions like education, the army, the universal welfare state, and trade-unions.

In line with the difference-blind logic of Republican citizenship, French authorities have continued to refuse to take into account racial and ethnic differences when assessing immigrants’ social mobility or incorporating their interests in state structures. After naturalisation, all distinctions between French citizens are made irrelevant (Bleich, 2000). There is even a 1978 law forbidding the gathering of statistical data on the basis of ethnicity, except under restricted circumstances of individual consent and formal approval of a national commission (‘Commission Nationale de l’Informatique et des Libertés’, CNIL) (Bleich, 2000; Geddes & Guireaudon, 2004). In order to target inequality and redistribute resources without having to recognise ethnicity, French authorities have instead resorted to a policy of ‘replacement’ (de Zwart & Poppelaars, 2007). This means that no group-specific policies are developed, but that educational and labour-market policies implicitly focus on marginalised migrant groups.

Urban integration policies (‘Politique de la Ville’) target areas with low social-economic standards (‘cités’) rather than ethnic minorities per se. The state subsidises
housing projects that are selected for their enduring poverty and unemployment ('Habitations à Loyer Modéré', HLM) and creates priority zones of education in some poor areas (since 1981 the ‘Zones d’éducation prioritaires’, ZEP, and since the 1990s, an additional category of schools exist in areas called ‘Zones urbaines sensibles’, ZUP) (Laurence & Vaisse, 2006: 186). Educational establishments also receive extra funding if they give priority to students from disadvantaged neighbourhoods, and in 2004 a vast system of vocational training for the unemployed was established. The social disparities remaining between migrant ethnic minorities and native French are thus primarily attributed to class, rather than to cultural differences or racial prejudices (Labourde, 2008: 184).

That anti-discrimination legislation in the criminal law and the Labour Code have largely focused on acts of expressive racism, rather than on equality of outcome, is illustrative of the ethnicity-blind approach to citizenship. Anti-discrimination laws that focus on equality of outcome rather equal opportunity would, after all, require some recognition of ‘race’ and ‘ethnicity’ as real sociological categories (Geddes & Guiraudon, 2004). By only focusing on openly racist speech, French policies fail to tackle routine discriminatory practices that are not always intentional and may be embedded in institutional practices. Local authorities therefore covertly engage in the management of ethnic diversity. Informal quota systems exist to encourage native white French to buy or rent property in such migrant populated areas (Bleich, 2000: 52-53). Moreover, authorities have increasingly called for a change of strategy to tackle structural inequalities. In 2003, the National Commission on Civil Liberties (CNIL) advised the Government to start collecting ethnic data for statistical studies in order to better combat inequality. Then-President Jacques Chirac was one of the many who rejected the idea, and the Constitutional Council ruled that the collection of such data conflicted with Article 1 of the French Constitution, protecting equality between citizens and the ‘indivisible’ French nation (Mc Goldrick, 2006: 41). After the riots of 2005 in French suburbs, the then-Minister of Interior Nicolas Sarkozy launched the initiative to introduce positive discrimination measures. The idea was fiercely criticised, and was later withdrawn by Sarkozy, who nonetheless appointed a significant number of women from immigrant backgrounds to his cabinet in 2007 (Raymond, 2007; see chapter 6).

The anti-discrimination framework has changed under European pressure to implement EU Equality Directives. In 2001, an antidiscrimination law was passed, and on January 17th 2002 the prohibition of discrimination in housing was included in the social modernisation law (Laurence & Vaisse, 2006: 61). In 2004, a ‘High Council against Discrimination and For Equality’ (Haut Autorité de Lutte contre les Discriminations et pour Egalité, HALDE) was set up, including an Equal Treatment Commission one year

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90 In 2003, a public debate emerged when the national statistical agency (CNIL) suggested including ‘ethnic origin’ in a census to measure experiences of discrimination. In contrast to the Netherlands, ethnicity would be determined based on people’s self-identification rather than place of birth or ancestry. The National Statistics Institute (‘Institut National de la Statistique et des Études Economique’, INSEE) and National Demographics Institute (‘Institut National d’Études Demographiques’, INDD) opposed the collection of such data (Guiraudon, 1998). Also, the then-President Chirac emphasized that: “The Republic does not recognise people on the basis of their origin. You are French, and there are French people of all ethnic origins. The idea of checking a box for ethnic identity is scandalous and contrary to the principle of the Republic. It’s illegal and immoral” (quoted in Laurence & Vaise, 2006: 176).
later. The HALDE must be consulted on all legal bills pertaining to discrimination. It gives legal advice, mediates in conflicts if individuals feel discriminated against, and can initiate investigations and lawsuits on behalf of victims of ethnic, religious or other discrimination in housing, work or entertainment establishments before the criminal court (Geddes & Guireaudon, 2004). Together with the smaller and older National Advisory Commission on Human Rights (the Commission Nationale Consultative des Droits de l’Homme, CNCDH), it may also embark upon research and launch public campaigns to fight discrimination. After the riots of 2005, the HALDE was given additional enforcement powers and the legislature adopted an Equal Opportunities Law. This law focuses particularly on improving the educational and labour-market participation of socio-economically marginalised youth.

Moreover, non-state human rights associations are involved in the deliberation over and implementation of anti-racism legislation, such as the International League against Racism and Anti-Semitism (‘Ligue Internationale contre le Racisme et l’Antisémitisme’, LICRA), the League of Human Rights (‘Ligue du Droits des Hommes’, LDH), SOS Racism, and the Movement against Racism and for Solidarity between Peoples (‘le Mouvement contre le Racisme et pour l’Amitié entre les Peuples’, MRAP) (Bleich, 2002).

Since 1985, these four associations, which have strong universalist outlooks, have also been allowed to join lawsuits as plaintiffs (Laurence & Vaisse, 2006). Institutional opportunities to report discrimination have thus improved over time. According to Jonathan Laurence and Justin Vaisse (2006: 191), it is even clear that “the parameters of French policies towards the country’s minorities have changed dramatically in the past decades, from a classically republican and “colour-blind” approach to something more nuanced.”

In the Netherlands, immigrant integration policies have shifted over time (Duyvendak & Scholten, 2009). From 1980 to 1994, the government’s ‘ethnic minority policy’ focused on improving immigrants’ legal and socio-economic conditions and promoting cultural group emancipation. In its first policy report of 1983, the Government aimed ‘to achieve a society in which the members of minority groups that reside in the Netherlands can, each individually as well as group-wise, enjoy an equal position and full opportunities for development’ (Minderhedennota, 1983, TK 1982-1983, 16102, no. 21: 107, quoted from Scholten, 2007: 81, his italics). Nationality was dissociated from citizenship in 1985 when foreigners were granted the right to vote in local elections after 5 years of legal residency. Non-citizens were also allowed to work in the civil service, excluding the police force and the army (Ersanilli, 2010). In contrast to France, the Netherlands embarked upon a policy of recognition, believing that integration was most likely to be accomplished through strong ethnic minority migrant cultures. But instead of a normative multiculturalism that regards the preservation of immigrant cultures itself as valuable, Dutch integration policies focused on cultural retention as a means of smoothly integrating immigrants into Dutch society, believing that strong cultural identities could help immigrants find their way in the new society (Duyvendak & Scholten, 2009; Vermeulen & Pennix, 2000; Rath et al., 2001).

The Government focused only on specific minority groups that were seen as lagging behind, such as Moluccan, Surinamese and Antillean postcolonial migrants, Turkish and Moroccan labour-migrants, as well as refugees and indigenous minorities like ‘gypsies’ and ‘caravan dwellers’ (de Zwart en Poppelaars, 2007; Entzinger, 2003;
Scholten, 2008). In 1985, an advisory and consultation structure was developed to enhance minorities’ political voice, and to contain social peace in a de facto multicultural society. It was formalised in 1997 when the Law on the Consultation of Minorities (‘Wet Overlegorgaan Minderheden’) was adopted. Article 2 of the 1997 Law explicitly allows self-organisations on grounds of ethnicity. Article 6 also provides funding for minority associations (Kortmann, 2010).

Even though the Netherlands formally abandoned its group-based approach in its ‘integration policy plan’ of 1994, the Minister of Integration continues to meet regularly with officially recognised minority representative bodies. Also, at the municipality level, other special representative bodies exist. The government today funds only self-organisations that will contribute to the social-economic participation and emancipation of individual immigrants or enhance inter-cultural dialogue. Previously it structurally funded immigrant groups that were categorised as socioeconomically lagging. In other words, authorities have been quite hesitant to fund religious activities directly, regarding this as an infringement on the separation between church and state (Rijkschroef & Duyvendak, 2004). In fact, by 1979, the Scientific Council for Government Policy had already rejected the idea of creating a new Islamic pillar (Vink, 2007), fearing it would isolate itself from a secularized, individualistic society (Rath et al., 2001, see chapter 4).

The Dutch government temporarily experimented with affirmative action in the 1980s and early 1990s in order to enhance the number of minority members in government services (‘Etnische Minderheden bij de Overheden’, EMO), successfully doubling the number of young Moroccan and Turkish people in the civil service during both 1987-89 and 1993-1995 (Doomernik, 1988: 64). Furthermore, employers were encouraged to increase the number of ethnic minority employees. In 1990, the so-called STAR agreement was reached, but employers were reluctant to implement it. Thereafter, the Government proposed a law requiring private employers to register the ethnic composition of their personnel to enhance diversity in business. In 1998, the Act for Stimulation of Labour Market Participation (‘Wet Stimulering Arbeidsdeelname Minderheden’, Wet SAMEN) went into force. However, ethnicity registration was fiercely opposed by employers and the Act was discontinued in 2004.91

Also of note is the 1994 creation of the National Bureau against Racism (LBR) and Europe’s first Equal Treatment Commission (ETC), which has its origins in combating sex discrimination (see Chapter 6). In 1994, the general Equal Treatment Act (ETA) went into force, prohibiting discrimination on the grounds of sex, faith, political orientation, race (including ethnic background), nationality, sexual orientation and marital status. Article 2 explicitly allows for discrimination on the basis of ethnicity for the purpose of equality of outcome. Also, the Dutch Law on Data Collection (‘Wet bescherming Persoonsgegevens’) explicitly allows for ethnic differentiation in redistributing resources as an exception to the

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91 In addition to the Wet SAMEN, agreements made between governments and businesses have been abolished, such as the ‘Convent Minorities’ (‘Minderhedenconvenant’). Several programmes to subsidize employers that hire ethnic minorities with little opportunity on the labour market have also ended. Nevertheless, up until very recently the government still encouraged diversity in employment through soft policy measures, including the creation of jobs/internships for certain groups of people, the creation of co-ed learn and work trajectories, improvement of information for employers on skilled persons with non-Dutch backgrounds and job mediation.
non-discrimination principle embedded in Article 1 of the Dutch constitution. The Netherlands is unique among the three countries in that the European Racial Equality Directive (2000/43/EC) and Employment Equality Directive (2000/78/EC) have been implemented in national legislation without any difficulty (Ruygrok, 2003).

Since the mid-1990s, authorities have abandoned the idea of emancipating immigrants by fostering their ethno-cultural group identities. They now put more emphasis on the legal rights and duties of individual immigrants, and on ensuring equal opportunity in education and the labour-market, particularly for youngsters (Scholten, 2008; Duyvendak & Scholten, 2009). After the turn of the century, cultural adaptation became more important for integration, as demonstrated by the introduction of citizenship and language tests for nationality acquisition. Rather than foster a society composed of different ethnic minority groups coexisting alongside a culturally dominant majority, the Government now placed emphasis on shared national values and the rule of law. The Government (VVD, D66, CDA) clearly stated in its 2004 policy report that ‘this cabinet […] distances itself from multiculturalism as a normative ideal, from the open-endedness of the past and from a government that takes ethnic minorities by the hand as if they were subjects in need of care’ (quoted from Vink, 2007: 346). Moreover, immigrants were made increasingly responsible for their own integration, which was seen as a ‘citizenship duty’. Policies also target immigrant women, who are primarily targeted in their role as working mothers and educators, aiming at the cultural integration of their children in Dutch society (Roggeband & Verloo, 2007). This is not a novelty. Similarly, in the 1950s the Dutch Government designed special integration programmes to foster the assimilation of postcolonial immigrants from the former Dutch Indies. These were likewise directed at women as bearers of their culture. Indonesian-Dutch mothers in particular were educated by social workers to raise their children according to Dutch culture and traditions (Schuster, 1999).

Nonetheless, the ‘National Consultation of Minorities’ still exists, allowing the Government to meet with officially recognised ‘minorities’ (‘Landelijk Overleg Minderheden’, LOM, before LAOM). The Netherlands also offers various programmes on public television and radio targeting minorities (Koopmans et al. 2006). Moreover, while policy paradigms have shifted from multiculturalism to civic assimilation via social-

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92 Article 1 establishes that ‘all persons in the Netherlands shall be treated equally in all circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other ground whatsoever shall not be permitted’.

93 Nationalised Dutch migrant women have been policy targets since the introduction of citizenship integration courses in 2007 (and immigrant resident mothers since 1998). Because they cannot be obliged to participate in the course, the state allows them to voluntarily participate in the language courses offered by municipalities free of charge. Research found that most migrant women are assigned to courses testing language skills in the domains of ‘citizenship’ that focus on ‘raising children’ rather than in the domains of ‘work’ or ‘entrepreneurship’ that are primarily followed by male migrants: Kirk, K. (2010), ‘A Gendered Story of Citizenship: A Narrative Policy analysis of Dutch Civic Integration Policy’, PhD thesis defended at department of Political Science of Queens University Belfast.

94 The LOM is intended both to advise the government and to represent minorities’ interests. It consists of eight minority organisations, and meets with the government at least three times a year to discuss matters of integration. These officially subsidized minority groups are supposed to represent Turks, Moroccans, Southern European communities, Caribbean Dutch, Surinamese, Moroccans and refugees.
economic integration, the underlying categories of immigrants as ethnic minorities needing to be ‘integrated’ have remained fairly stable. Individual immigrants continue to be seen as members of different ethnic communities rather than of one Dutch nation. The Dutch label ‘allochthone’, for instance, was invented as a governmental statistical term to refer to people with non-Dutch ethnic backgrounds, in order to register their socio-economic situation for policy purposes. However, the word gained meaning beyond its initial usage. It functionally sets apart immigrants with real or attributed ethnic identities from native white Dutch, suggesting that integration will never be possible (Essed & Trienekes, 2008). As Frank de Zwart (2009: 15) aptly summarises: “People have learned to think of Dutch society as composed of an ethnic Dutch majority, surrounded by various sharply distinguished ethnic or cultural minorities. In the process differences are emphasised, numbers exaggerated, and stereotypes reinforced”.

In Germany, no national integration framework existed until 2000, when authorities officially abandoned the myth that it was not an immigration country. This does not mean that there were previously no integration measures. In 1975, a coalition government of the Socialist and Liberal parties presented a programme for immigrant employment, systematically outlining the idea of ‘temporary integration’ for former migrant workers and their families. A special commission was charged with drafting comprehensive proposals for future policy. Even though its proposals stated that the Federal Republic of Germany was not a country of immigration, and that foreign workers should ultimately return to their homelands, it also urged the Government to intensify its programmes for integration. The Government responded in 1978, installing a Federal Commissioner for Foreigners (‘Beauftragter der Bundesregierung für Ausländerfragen’, hereinafter ‘Ausländerbeauftragte’) in the Federal Ministry of Labour and Social Affairs to provide information and advice about the labour market and living situation of foreign migrants. Similar officers were created at the Länder level (Broeders, 2001). In 1980, the Government endorsed the advice of the then-Commissioner for Foreigners to further the integration of immigrant workers by fostering the ‘social’ integration of second and third generations. Yet, it also emphasised the need to maintain ties with the countries of origin to encourage an eventual return ‘home,’ both through so-called ‘mother-tongue courses’ and monetary incentives, and it remained difficult for immigrants and their children to naturalise.

Local authorities initiated programmes to foster the social and economic incorporation of immigrants: they funded welfare organisations offering social workers and leisure centres to immigrants of different nationalities and religions: Catholic welfare organisations catered to the interests of Catholic migrants from Italy and Croatia; Evangelical organisations supported Orthodox Greek migrants, and Social Democrats supported Turkish guest-workers (Michalowski, 2007). Migrant workers also joined trade-unions, which enabled them to influence working conditions, and their numbers on

95 Officially, the term refers to residents born in a foreign country who have at least one foreign-born parent. It also includes Netherlands-born children with at least one foreign-born parent. Allochtones are juxtaposed to ‘autochtones,’ people of Dutch birth and ancestry. Further distinctions are made between ‘Western’ and ‘non-Western’ allochtones. See for a genealogy of the term, as well as its racist connotations: Yanow D. & Ter Haar, M., (forthcoming), ‘People out of Place: Allochtony and autochtony in the Netherlands identity discourse – metaphors and categories in action’, Journal of International Relations and Development. Special Issue on Politics and Language, edited by Alan Cienki & Dvora Yanow.
Germany’s industrial advisory boards significantly increased after they gained voting rights in 1972 in factory and company councils (Thranhardt, 2008). Well-organised language courses and labour-market integration projects existed at the local level, even though they primarily focused on Aussiedler (Schonwelder, 2006; Thranhardt, 2008). Some liberal Laender wanted to introduce local voting rights for foreigners in 1989. But when a case was brought before the Constitutional Court, its judges concluded that only German nationals had voting rights on grounds of the Basic Law (Broeders, 2001).

In June 2001, the ‘Independent Commission Immigration’ – also known as the Sussmuth Commission, headed by Rita Sussmuth (CDU) and Hans-Jochen Vogel (SPD) and installed by the SPD-Green coalition - advised the Government to replace these ‘pragmatic’ integration projects with a federal and structural framework that no longer focused exclusively on German emigrants, but rather on integrating ‘people of different cultures and background’. The Commission, consisting of several city representatives, social, religious, political and scientific representatives and members of (ethnic) interest groups, also advised the Government to open up public service jobs for non-German nationals. This policy advice served as a guideline for Germany’s present-day integration policies. In 2002, a new Federal Department for Migration and Refugees was installed (‘Bundesamt für Migration und Flüchtlinge’, BAMF) to finance and coordinate (together with local authorities) the civic integration courses that migrants must follow to be eligible for a permanent residence permit. The policy shift is also indicated by the change of the name in 2005 of the Federal Commissioner for Foreigners to the Commissioner for Migration, Refugees and Integration (‘Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration’).

Furthermore, the Federal Government has started to reach out to migrant minorities. In 2006, the CDU/CSU-SDP Government of Chancellor Angela Merkel initiated the first of the so-called ‘Integration Summit’ (‘Integrationsgipfel’). Several federal and local authorities and a wide range of selected immigrant self-organisations and individuals were invited to discuss integration issues. This was primarily a top-down initiative to get immigrant organisations involved in the development and implementation of a National Integration Plan, the agenda of which was nonetheless set by the Government (Musch, 2010). So-called Foreigner Councils have long existed at the municipality level (‘Ausländerbeirate’), collectively representing immigrant interests. These councils must be consulted by municipal governments in policy debates. Both naturalised immigrants and immigrants that have lived in the respective municipality for three consecutive months can be elected to these multi-ethnic and multi-religious councils. Hence, even though they are German nationals, immigrants are still approached as ‘foreigners’ (‘Ausländer’).

Employment restrictions also continue to exist for third-country nationals in certain public sectors, including the police, army and education (‘Beamte’), even though regular civil service jobs (‘Angestellte’) were opened up for third-country nationals in 1993. Today, only few Länder allow foreigners as Beamte, particularly in the police, if there is an

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97 Policy documents initially labelled labour-migrants as ‘foreign workers’ (‘Fremdarbeiter’). This term was replaced in the 1960s by ‘guestworkers’ (‘Gastarbeiter’), because of the former’s connotation to the Third Reich’s label for forced labour-force (Pratt Ewing, 2008: 217). Hereafter, labels have shifted from ‘foreigners’ (‘Ausländer’), ‘foreign co-citizens’ (‘ausländische Mitbürger’), ‘migrants’ (‘Migranten’) to ‘immigrants’ (‘Zuwander’) (Michalowski, 2007: 35).
urgent public interest (Koopmans, Michalowski & Waibel, 2010). No affirmative action programmes exist to enhance the number of minorities in public institutions. Moreover, only a weak anti-discrimination framework exists. In 2006 the general Equal Treatment Act (ETA) came into force, based upon the equality Directives of the EU (EC 2000/78; 2000/43) that obliges member-states to protect people from ethnic and racial discrimination. In order to pass the Equal Treatment Act in the Federal Parliament and the Federal Council, the Act had to be amended several times (see Rottman & Ferree, 2008).

The result is that the current Act provides only moderate protection from discrimination for citizens. Its scope does not extend to public institutions and does not include discrimination between individuals or on grounds of national citizenship; it only protects people in large firms from discrimination on grounds of religion. Moreover, the Equal Treatment Commission is located in the Federal Ministry of Family and Women’s affairs and does therefore not have the same autonomy or judicial scope as its Dutch and French counterparts: its employees are appointed by the Government, and it cannot sanction or advise employers or (federal) authorities to compensate people who have been discriminated against, or file complaints to courts. While immigrants thus benefit from Germany’s corporatist welfare state in regard to social-economic rights, the German state has only recently paid attention to their civic and political rights.

To summarise this section, striking differences exist between the approaches the three countries have taken towards immigrants. Germany long denied being an immigration country and primarily focused on improving social-economic conditions for migrants as workers. Due to their lack of citizenship, few opportunities existed for immigrants to access public service jobs, to vote, or to claim equal opportunities. Even when naturalised, immigrants are only moderately protected against discrimination. By contrast, France and the Netherlands have practiced open citizenship and developed active integration programmes since the 1980s. French integration strategies exemplify a vision of a country composed of individual Frenchmen all sharing a similar Republican culture. Immigrants are invited to acquire this status and expected to become culturally French, which implies becoming convinced of the value of Republican national identity. French Universalism and its emphasis on common humanity is a powerful weapon against unequal treatment, but the denial of difference makes it difficult to tackle structural and unintentional ethnic discrimination, or to involve disadvantaged groups in policy debates. By contrast, Dutch integration strategies illustrate a perception of a nation composed of different ethnic minorities coexisting alongside a culturally dominant majority, one in which cultural difference was initially tolerated but increasingly seen as obstructive. Halleh Ghorashi (2006: 8-17) has situated this continuing group-based thinking about cultural differences in the legacy of pillarisation, which divided Dutch society in strictly divided groups and would have left the Dutch with a “categorical thinking” mindset that entails an essentialist conception of culture. This makes it “seem almost impossible to detach the individual immigrant from his/her cultural and/or ethnic category” (see also Rath (1991) on the ‘minoritisation’ habitus in Dutch discourses about citizenship). While the existence of

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98 A first draft from 2001 (initiated by the then SPD Minister of Justice Herta Däubler-Gmelin) failed to pass the Federal Parliament. A new version was rejected by the Federal Council, which was at that time dominated by the conservative parties CDU/CSU. The new draft was a compromise between the coalition partners CDU/CSU and SPD (Rottman & Ferree, 2008).
ethnic minority councils and of antidiscrimination machinery thus makes it easier for Muslim women to draw attention to particular kinds of disadvantages, the emphasis on (real or perceived) cultural differences may simultaneously function to exclude immigrants from the nation.

All three countries’ citizenship and integration programmes have gradually converged, with Germany opening up citizenship rights to German-born immigrant children and France and the Netherlands restricting naturalisation and requiring shared values. We may therefore expect a convergence over time in the policy debates on the hijab.

5.2.3 Political allies for claims of equality and cultural recognition

In France, we may expect the Left to function as an ally for migrant women to claim recognition of their headscarves. When in the 1980s migrants started mobilising to claim substantive equality and nationality, migrant-related issues became the subject of political discussion in the 1980s, the Socialist Party took up the claims of immigrants to improve their political and social economic rights, and initially adopted a pluralist discourse (Favell, 1998; Feldblum, 1999; Wayland, 1995). But in the mid 1980s, the PS abandoned its multicultural approach in favour of colour-blind Republicanism, due to the ethno-nationalistic, differentialist discourse of the far-Right (Bertossi, 2007; Duyvendak, 2001). The PCF has moderated its initial reactionary working-class populism and, together with the Greens, gradually accepted the importance of immigrants’ self-identities for their emancipation. In 2000, Jospin’s left-wing Government of the Socialist party, Greens, Radicals and Communists endorsed the claims of ethnic and racial minorities, by passing a law acknowledging slavery as a crime against humanity.\(^99\) Moreover, when in 2005 the UMP parliamentary majority passed a law that obliged high-school teachers to teach the ‘positive sides’ of colonialism, post-colonial citizens, scholars and school-unions forged successful alliances with Left wing parties to have the law repealed.

The established Right, by contrast, adopted some elements of the FN’s discourse by politicising nationality and immigration control, culminating in a 1993 reform and nationality law that curtailed the rights to automatic citizenship of postcolonial immigrant children.\(^100\) A new politicisation of Republican citizenship occurred after 2002, when Jean-Marie Le Pen of FN came second in the first round of the Presidential elections, following a campaign in which the issues of the legal status of nationality and dual citizenship had figured prominently. The established Right shifted attention to immigration control, law and order and a defence of nationalistic values, with then-Minister of the Interior Nicolas Sarkozy declaring youth from the poor migrant-populated suburbs to be ‘scum’ when faced with civil unrest there in October 2005. President Sarkozy launched a Ministry of Immigration, Integration and National Identity in 2007, and in November 2009 the

\(^99\) This had much to do with the active lobbying of the single black member of the French Parliament, Christiana Taubira (of the parliamentary group Socialiste, Radical et Citoyen) and her relationship with the black movement in France, whose ‘Representative Council for Black Associations’ (‘Conseil Representatif des Associations Noires’, CRAN), which brings together sixty NGOs of black people, successfully lobbied for the law.

Government introduced a ‘grand debate on national identity’ (Weil, Spire & Bertossi, 2010). In 2007, the UMP passed a controversial law requiring family migrants to undergo DNA tests in order to prove blood affiliations (the ‘loi Hортefeux’ of 2007).\textsuperscript{101} President Sarkozy has, however, also introduced ethnicity into the migration debate from a different angle, by openly admitting to be in favour of affirmative action measures to enhance ethnic and religious diversity, an admission that breaks the taboo on different-blindness.

In the Netherlands, we may expect that until the turn of the century the traditional pro-migrant party PvdA, the Green party (both of which have a relatively high number of parliamentarians with a Turkish or Moroccan background\textsuperscript{102}), as well as the pro-pillarisation/multiculturalism party CDA will function as allies for hijab-wearing women’s claims of recognition. However, we may observe a shift in position of all parties after the turn of the century to the more restrictive positions of the Right, emphasising the assimilation of immigrants to a Dutch culture.

During the 1990s already, an incipient cultural cleavage emerged when the nation came to the fore again in debates about immigration and integration. Some members of the Liberal party were critical of cultural accommodation, with faction leader Frits Bolkestein of the VVD arguing at the Liberal International Conference of 1991 that Muslim immigrants had to adopt the principles of secularism and equality between men and women.\textsuperscript{103} This triggered a ‘national minorities’ debate about the conditions of integration, in particular the role of immigrants’ ethno-religious culture in that process (see particularly Prins, 2000). Also within the PvdA, the heritage of Dutch multiculturalism was criticised. In a 2000 article called ‘the Multicultural Drama,’\textsuperscript{104} the historian and former Social-Democrat Paul Scheffer voiced his concerns about the emergence of an ethnic underclass of Muslims, whose cultural differences conflicted with Dutch democratic achievements. The director of the Dutch Social and Cultural Research institute (SCP), Paul Schnabel, also published a critical article called ‘The Multicultural Illusion,’ which likewise criticised cultural relativism.\textsuperscript{105} This accompanied debates about what the nation is or should be, with the emergence of historical canons to be taught in schools (Kesic & Duyvendak, 2010).

\textsuperscript{101} This was fiercely criticized and parallels were drawn to National Socialism, which selected Jews for exclusion based on origin. The Senate amended the law significantly, while the new Minister of Integration of 2009, Érik Besson (PS), has not taken up the issue of DNA tests.

\textsuperscript{102} The representation of people with an ethnic minority background in politics is relatively high in the Netherlands. In 2006, 10 percent of national politicians had a minority background, which equals their proportion of the Dutch population, but municipal politicians had only 3 percent (Keuzenkamp & Merens, 2006). I could not find comparable data for the other two countries, since France does not register ethnicity while German data is based on place of birth rather than ethnic origin. In Germany, 8.2 % of the candidates in the Bundestag was first or second generation migrant in 1998. This decreased to 5.4 % in 2005, mostly because of a reducing number of ethnic German legislatures migrating from Eastern Europe: Fonseca, S. (2006), Immigrant Constituencies as Political Challenge. The German Federal Elections 1998-2005 Revisited. Paper prepared for presentation to the panel on ‘Parties and Immigration in Europe’ at the Annual Meeting of the American Political Science Association, August 31- September 2, 2006, Philadelphia, USA.


In the last decade, this cultural cleavage has been increasingly politicised by nativist parties, which have won major victories by calling for the assimilation of immigrants into Dutch culture. After September 11th, Pim Fortuyn entered the political arena, successfully blaming the ‘left-wing church’ for neglecting the integration problems that native Dutch faced in their neighbourhoods, and presenting Islam as a backward religion that needed to be brought in line with Western modernity. ‘Mass’ immigration had to be halted. This discourse radicalised when the Liberal deputy Geert Wilders and his Freedom Party gained political credibility after gaining a substantial number of seats in the 2006 and 2009 parliamentary elections. As a result, Dutch established right-wing and left-wing parties have both moved in the direction of the LPF (Kriesi et al., 2006).

In Germany, I also expect the Left to function as an ally for hijab-wearing women’s claims of recognition and equality. Historically, the SPD defended the rights and interests of Ausländer as labour migrants, who enjoyed a strong position in Leftist trade-unions (Thränhardt, 2000). It also favoured de-ethnicising nationality by granting citizenship to German-born children of Turkish immigrants. The Green party had already initiated debates in the 1980s to liberalise naturalisation procedures for migrants of non-German ethnic background, to tolerate dual citizenship, and to introduce the ius soli principle in the citizenship law. The Green party even flirted briefly with multicultural rhetoric that celebrated immigrants’ cultural differences (Pratt Ewing, 2008). When an SPD-Greens Government entered office under Chancellor Schröder (1998-2005), citizenship was opened up for German-born children of foreigners. Also the PDS takes a liberal position on immigration (Kriesi et al., 2006: 940). The FDP takes a central position in regard to immigration and integration that is more similar to the SPD. It supported opening up citizenship for migrant minorities on the condition that immigrants give up their dual nationality.

The Conservative Union parties have, by contrast, long adhered to an ethnically based concept of citizenship, opposing the introduction of ius soli (Broeders, 2001). Christian Protestant and Catholic welfare organisations catered German emigrants’ needs. Even though the CDU has come to terms with the de facto multicultural character of present-day society, it continues to demand immigrants’ assimilation to German values and adherence to the law. In 2000, after Germany opened up citizenship to foreigners born in Germany, politicians of the CDU launched a national debate about the assimilation of immigrants to a German ‘Leitkultur’. This re-awakened the public unease that had surrounded German national identity ever since its Nazi past (Pratt Ewing, 2008). Several times, conservative-ruled Länder in the Federal Council also blocked the law proposals of the Schröder Government to implement the 2004 EU antidiscrimination directives.

The dominance of German mainstream conservative union parties espousing reactive nationalism and ethnocentrism contrasts with France and the Netherlands, where such rhetoric has been more confined to populist right-wing parties. I therefore expect that left-wing parties and federal states with left-wing Governments will most likely support immigrant women’s claim equal rights and recognition, while the Christian-Democrat-ruled states will continue to differentiate between ethnic and non-ethnic Germans. In the Netherlands and France, the increasing popularity of right-wing parties playing into the cultural cleavage may lead to a more restrictive stance towards multicultural claims of recognition over time by mainstream parties.
5.3 Conclusion
In this chapter I have compared the three countries’ ethnic cleavages around nationality, citizenship and integration policy frameworks, identifying the opportunities for and constraints on political actors pushing for the recognition of the hijab as an expression of migrant minorities’ religious culture. I expect the headscarf, when framed in terms of nationality and ethnic diversity, to be most contentious in Germany, due to a salient structural cleavage around national identity. Because Germany has practiced an ethnic citizenship that made it difficult for migrants to obtain legal and political citizenship rights, we should also expect few opportunities to claim equal rights and recognition, though a change may become visible since the turn of the century when new powerful allies emerge, especially on the Left. Because French authorities are not inclined to recognise expressions of linguistic, ethnic or religious difference in the public sphere, we may expect few opportunities to claim recognition for cultural differences, but more opportunities to claim equal rights than in Germany. The Netherlands has developed strong anti-discrimination machinery focusing on equality of outcome, increasing opportunities to claim both rights and cultural recognition. Yet we may expect decreasing opportunities since the late 1990s, linked to changes in citizenship and integration policies, coupled with the rise of nativist parties. Due to a convergence in the three countries’ citizenship and integration policies, with Germany opening up citizenship and France and the Netherlands making cultural integration a condition for citizenship, I expect a similar convergence to occur in the framing of the hijab. Table 3 summarises the differences and similarities in this issue-specific POS and my expectations for the politicisation of the hijab.
<table>
<thead>
<tr>
<th>Cleavages around national identity</th>
<th>France</th>
<th>Netherlands</th>
<th>Germany</th>
<th>Expectations</th>
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<td></td>
<td>Rather pacified cleavage, except for regional cleavage</td>
<td>Rather pacified cleavage</td>
<td>Nationality only pacified cleavage in 1990s after the unification of German states</td>
<td>Headscarf most salient in Germany if framed in terms of national identity/ nationality</td>
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| Citizenship and immigrant integration policies | Open citizenship policy; double nationality allowed; degree of assimilation expected; no immigrant representation councils; denial of ethnic differences in integration policies and emphasis on individual’s equal rights and social-economic equality | Open citizenship policy; double nationality not allowed; shifting integration policies from multicultural approach to civic assimilation > 2000, via soc-ec. Integration; ethnic minority councils and strong antidiscrimination framework | Closed citizenship for non German immigrants until 2000; double nationality not allowed; assimilation condition for cz. local integration policies focused on soc-ec. rights, weak antidiscrimination framework; ‘Foreigners’ Councils | Opportunities to claims equal rights more limited in Germany compared to France and NL, and to cultural recognition in NL than in Germany/France. But convergence between citizenship and integration policies towards higher cultural requirements = convergence in headscarf debates/policies becoming more restrictive |

| Political allies for claims of equality and cultural recognition | Most support among PCF, Greens, and PS; least among RPR/UMP. Favorable opportunities in 1980s decrease with rise of far-Right | Most support among PvdA, Greens, D66 and, until 2002, CDA, least among VVD. With rise of populist Right > 2002, the CDA, VVD and PvdA become ambivalent allies, and opportunities decrease | Most support among SPD, Greens and PDS, least among CDU/CSU. Weak opportunities in CDU/CSU ruled states, particularly when challenged by far-Right parties at local level | Fewest political opportunities in Germany when when federal and Länder governments are ruled by conservative Union parties. In France and later in NL, decreasing opportunities to claim equal rights and recognition |

| Expectations for each country on grounds of migrant incorporation policy paradigms | Due to open citizenship, hijab-wearing women - will be approached as citizens with equal rights. Little opportunities to claim cultural recognition or to target indirect discrimination of ethnic minorities | Due to open and group based citizenship, hijab-wearing women will be approached as members of ethnic minorities, protected against (indirect) discrimination. Opportunities decrease over time due to changing POS | Due to closed citizenship, hijab-wearing women long excluded or ignored as foreigners. After turn of century inst. opportunities increase to claim equal rights, but opposition expected from strong nationalist parties |
Chapter 6. Governing gender differences in France, Germany and the Netherlands

6.1 Introduction

This chapter aims to provide an institutional explanation for the differences and similarities in the ways in which debates and policies on the hijab have been gendered in the three countries in question. The donning of the hijab is not only a claim for recognition of a minority group whose religion arrived in Europe through migration, but also an act by women who believe that veiling is a prescription in their faith. In this light, we may expect it to be subject to national ideas and institutions regulating gender relations. This chapter compares the countries’ institutions and policy legacies regarding emancipation and gender equality, with the aim of stipulating expected outcomes how this influences the ways in which debates on the hijab are gendered. By ‘gendering’ in this context I mean that gender equality is referenced as a concern in the debate over the hijab.\(^\text{106}\) These references can be explicit or implicit regarding social relations between men and women, or regarding implicitly gendered categories and concepts of masculinity and femininity. Beyond the question of whether policy debates are gendered at all, I am interested in whether differences exist in the ways in which gender equality is understood in the three countries.

Three different conceptual approaches to gender equality have been proposed: an equality approach, a difference approach and a diversity approach (Squires, 2005; 2007). The \textit{equality approach} emphasises equal rights and opportunities for men and women as human beings, as well as the attainability of universal laws and rights. It demands that the concept of citizenship live up to its claims to universality and impartiality by making gender politically irrelevant and removing gender bias. The \textit{difference approach} believes in the complementarity of male and female roles and characteristics, arguing that equality can be reached if historically devalued roles of femininity and maternity are re-valued as equal-but-different contributions to society. The \textit{diversity approach} aims to go beyond this dichotomy between ‘difference’ and ‘equality’ by reckoning with the social implications of multiple constellations of gender, which intersect and collide with race/ethnicity, age, sexuality, religion and class, and addressing issues that arise with appropriate policies. Countries may have embarked upon all three approaches to advance the status of women, or have focussed on different strategies in different policy domains. This chapter starts from the assumption that specific approaches to gender equality will continue to exert path-dependent effects on the gendering of policy frames and responses to the hijab, and yet that such approaches and governing strategies also differ from one field to another, change over time and even differ between groups of women.

This chapter largely follows the same outline as the previous two institutional chapters. First, I will compare the three countries’ gender cleavages and examine the extent

to which such cleavages have been pacified. When I speak of gender cleavages, I refer to the saliency of conflicts around gender and sexuality, and the visibility of feminist activities and lobby for a new politics of sex that is opposed by others (see theoretical chapter). In countries where gender cleavages were still salient, we may expect the hijab to attract much political attention once related to women’s status and rights.

Second, I will compare each country’s laws, policies and strategies to regulate gender equality, including underlying logics, which are expected to differ from one policy sector to another. For this reason, I will compare state’s approaches and strategies to gender equality in three different policy sectors: women’s political rights (quotas or parity laws that strive for greater representation of women’s concerns and experiences in political institutions); social-economic rights (policies to foster the reconciliation of labour and care in order to improve women’s economic and social position); and finally civic rights (non-discrimination, equal pay, equal treatment) (von Wahl, 2006). Because states’ policies may also differ between groups of women (Brush, 2000), I will pay particular attention to the extent to which states’ policies have taken into account migrant minority women’s particular needs and interests. The second section also compares the history of the establishment of each country’s ‘gender machinery,’ its institutional capacity and its relation to different women’s movements (Bleijenburg & Roggeband: 2007: 447; Kantola & Outshoorn, 2007: 3). I expect that strong gender equality machineries will enable feminist voices inside and outside of state institutions to draw attention to gendered policy problems and outcomes of legislation. If countries’ gender equality machineries have many institutional-political and material resources, feminists should be expected to have more chances to halt laws that directly or indirectly discriminate against women on grounds of sex (Sauer, 2009).

Finally, I will analyse the existence of political allies for gender equality concerns in the party system, scrutinising the gender cleavages in each country’s party system. I will then propose a hypothesis as to what the differences and similarities between those issue-specific political opportunity structures may entail for the gendering and regulation of the hijab in France, Germany, and the Netherlands.

One note about the terminology used in this chapter. My use of the term ‘women’s movement’ is intended to include all women, interacting and organising collectively or individually, who identify with women as a group (however that group may be defined), who use explicitly gendered language and whose ideas are expressed in terms of representing women as women in public and social life (Mazur & Zwingel, 2003: 366). (Migrant) minority women’s movements refer to women’s organisations and individuals with an ethnic minority background. In the context of this research, most of these groups are composed of women of Maghrebian or Turkish descent (see also Roggeband, 2010). Feminist movements are women’s movements that share a political project to advance the status and condition of women as a group, explicitly challenging gender hierarchies and women’s subordination. I will use the term ‘Muslim feminists’ to identify all women

107 The word ‘Maghreb’ is derived from Arab, where it means ‘West’ or ‘time or place of sunset’. It designates the North-West regions of Africa, including Mauritania, Western Sahara, Morocco, Algeria, Tunisia, and Libya: Gordner, M.J (2008), ‘Challenging the French Exception; ‘Islam’ and laïcité’, In-Spire Journal of Law, Politics and Societies 3 (2): 72-87.

108 I derive this operational definition of feminism from the RNGS project (‘Research Network on Gender, Politics, and the State’), which compares different traditions of state feminism in European countries (see footnote 28). This should not obscure the different goals that women’s groups may
with social or cultural Islamic roots who express feminist ideals, regardless of their very different visions, backgrounds and strategies, and irrespective of whether they appropriate the term themselves.¹⁰⁹ I use the denominator ‘secular’ for Muslim feminists whose discourse illustrates a preference for a private rather than public role for religion.

6.2 Gender and women’s emancipation patterns

6.2.1 Gender cleavages: political polarisation and mobilisation of gender

In France, the women’s movement is still vibrant and alive, but highly split (Jenson, 1990; Mazur, 2007). Ever since the ‘first wave’ of feminism¹¹⁰ heralded their battle for equality and justice, French women have found themselves situated in the struggle between, on the one hand, the familialist doctrine of conservative right-wing parties and the Catholic Church and, on the other hand, the ostensibly gender-blind ethos of the Republicans. Initially, the Left also saw women’s struggle for equality as a bourgeois intervention that undermined a collective class struggle (Delmas, 2006; Ford, 2005). Women were only granted the right to vote and to run for office in 1944, almost a century after all adult men had been granted this right, and twenty-eight years after German and Dutch women’s suffrage movements achieved success (Siim, 2000).

As part of the 1968 student movement, a new women’s effort emerged that sought to radically change the conservative, Catholic society of post-war France. The fragmented Movement for the Liberation of Women (‘Mouvement de Libération des femmes’, MLF) have and the different ways in which they define the problems facing women in society and the solutions they suggest. In fact, the analysis of the hijab debates will illustrate how women compete over the meanings, goals and strategies of feminism, sometimes challenging the feminist credentials of other women’s groups in the process.

¹⁰⁹ Not all Muslim women who struggle for an improved women’s position label themselves feminist. Some Muslim women deliberately refuse to use the term as they associate feminism with a political project of Western European white women (see also Mohanty, 2003). Since they consider Islam to be an egalitarian religion, being a devout practicing Muslim for them already implies being in favour of gender equality. To account for the socially constructed power imbalances in Muslim cultures, they offer alternative and female-friendly readings of the Quran (Barlas, 2002). Other Muslim women do appropriate the term Islamic feminism, both to reclaim an Islam that is egalitarian and emancipatory and to reclaim a feminist project that is compatible with the doctrines of their faith (Al-Hibri, 1999; Badran, 2008; Hassan, 2001; Wadud, 1999; 2005). Still other Muslim women who advocate gender justice do not choose the label ‘Islamic’ feminism, because they don’t ground their feminist project on the sources of the Quran (Afshar, 1999; Ahmed, 1992; Mernissi, 1991a; 199b; Moghadam, 2002). Some are even very critical towards the feminist nature of Islam, finding the term ‘Islamic feminism’ an oxymoron in itself (Hirsi Ali, 2004; Majid, 2002). See also: International Congress of Islamic feminism in Barcelona http://feminismeislamic.org/home/ (Retrieved January 5, 2010).

¹¹⁰ The term ‘first-wave feminism’ refers to the socio-political conflicts that evolved around the unequal power relations between men and women in the late 19th and early 20th centuries. A second wave occurred in the late 1960s/ early 1970s. Some scholars have argued that a third wave of feminism occurred in the late 1980s/1990s, as ethnic and racial minority women claimed recognition for their particular needs and interests as both gendered and racial groups. They not only drew attention to the unequal relations between men and women but also to inequality among women. I utilize these terms in this piece, although I recognise that the term ‘wave’ falsely suggests a clean break between several feminist struggles (although it is more accurate for Germany, where later feminists consciously broke with their past).
argued for recognition of a new collective identity of ‘women’, defined in terms of sexual difference — a characteristic that crossed other social differences like class. It insisted upon the autonomous organisation of women and rejected cooperation with established authorities (Jenson, 1990). This movement fundamentally challenged the gender-neutral character of French Universalism by pointing out how sexual difference and its social effects continued to set women back (Mazur, 1995). Some egalitarian and labour-union feminists did negotiate with the state during this time. Then, in the 1970s, some feminists entered political parties and trade-unions and successfully pushed for legislative changes in certain domains like abortion (legalised in 1975) and reproductive rights (contraception legalised in 1976) (both framed in terms of individual rights and women’s dignity), equal pay, and non-discrimination (framed in terms of equality) (Sauer, 2010). While these feminists primarily allied with the Left, several liberal Rightists also supported their claims, demonstrating how the gender cleavage could transcend the Right-Left cleavage (Duyvendak, 2001).

Partly because of the rapid recognition of women’s issues, gender-related issues were quickly depoliticised in the party system. Yet, a rather anti-statist women’s movement continues to exist outside the political arena, which has crystallised into a dense organisational field that continues to mobilise. The largest umbrella association is the ‘National Collective for the Rights of Women’ (‘Collectif National des Droits des Femmes’, CNDF), which aggregates various women’s movements and branches of trade-unions and political parties on the Left.111 In opposition to the feminist movement, a much stronger familialist movement exists. Its interests in preserving the traditional nuclear family and gender roles are represented by the National Union of Family Associations (‘Union nationale des associations familiales’, UNAF) (Revillard, 2007). In the 1990s, women’s groups continued to organise en masse to protest against proposed restrictions on the right to abortion (succeeding in making access to contraception and abortion more accessible in 2000 and 2001), and in support of a rule that 50% of deputies ought to be female that was finally implemented in 2000 (Bereni, 2007; Jenson & Valiente, 2003; Lépinard, 2006; 2007; Scott, 2004; 2005). Some women’s movements also participated in the struggle of gay movements, which lobbied for a civil union pact passed in 1999 that allows same-sex couples to register (‘Pacte Civile de Solidarité’, PACS). It does not allow for same-sex marriage or filiation (Fassin, 1999).

Migrant minority women have also organised, but until the turn of the century they were less successful in drawing attention to their specific claims for gender justice. Particularly during the ‘Beur’ movement of the 1980s, feminist and lesbian groups brought together black and postcolonial migrant women to draw attention to their position as women of ethnic and racial minorities in France (Lloyd, 1998). Minority women’s groups allied with the anti-racist movement to address discrimination, and with the larger women’s movement to campaign against polygamy and genital mutilation (Bloul, 1996) or to advocate for migrant women’s independent status during the Algerian civil war (1991-...)

111 It brings together the MLF and its pillar-organisations like the French Movement for Family Planning (‘Mouvement Français pour le Planning Familial’, MFPF), the League for International Right of Women (‘La Ligue du Droit International des Femmes’, LDIF), as well as Choose – Women’s Cause (‘Choisir – La Cause des Femmes’) that struggles for reproductive rights and the Movement for the Liberation of Abortion and Contraception (‘Mouvement pour la Liberalisation de l’Avortement et la Contraception’, MLAC).
2002) (Lloyd, 1998). However, each of the other movements neglected an aspect of the struggle: anti-discrimination associations largely ignored the gender discrimination suffered by minority women, and the white women’s movement tended to focus on sex (and class) as the dominant dividing structures in society, disregarding power inequalities between women (Jenson, 1990; Lépinard, 2006; 2009; Lloyd, 1998). Lacking similar institutional and financial resources as the established women’s organisations, several migrant women’s movements disappeared in the 1990s, or turned their attention to grassroots activism in local neighbourhoods (Withol de Wenden & Leveau, 2007).

In the Netherlands, the once strong and successful independent women’s movement has been in decline since the mid-1990s. Plenty of movement events exist, but Dutch women’s organisations are fragmented, shaky and lacking continuity (Outshoorn & Kantola, 2007). Dutch society changed drastically in the late 1960s, though still more peacefully than in Germany and France, when feminist groups like ‘Dolle Mina’ and ‘Man-Vrouw Maatschappij’ started mobilising to claim equality, individual liberties and gender justice. Comparatively speaking, the Dutch women’s movement was strongly characterised by an emphasis on gender differences, using frames in debates about abortion (legalised in 1981) and political representation that focus on women’s choice and responsibility, rather than on women’s rights and equality (Sauer, 2010).

Due to the ‘institutionalisation of the women’s question’, as Joyce Outshoorn (2000) frames it, the movement overall has been quite successful in putting most of its concerns on the political agenda, including legalised sex work, reproductive rights, equal opportunity legislation and combating sexual violence (Outshoorn, 1999). Within two decades, Dutch society changed from a pillarised, conservative, middle-class-oriented society into a progressive liberal society where traditional family values are prioritised less and homosexuality tolerated more than in any other country in Europe (Duyvendak, Pels & Rijkschroeff, 2008).112 Yet, partly because of the pacification of gender cleavages, the movement lost much of its explicitly queer, radical and autonomous character (Roggeband, 2002; Duyvendak, 2001). When the state cut short subsidies during the mid-1990s, most autonomous associations disappeared, either because they were absorbed into semi-public professional organisations, or because they were unable to develop alternative sources of financing. Some achievements were nonetheless made, such as the possibility to legalise prostitution as sex work when the ban on brothels was lifted in 1999 and the institutionalisation of gay marriage in 2001, including the right of same-sex couples to adopt children (Chambon, 2002; Fassin & Feher, 1999).

Migrant minority women and women of colour started organising in the 1980s. Partly because of discontent with the white women’s movement’s failure to recognize its white and middle-class bias, they established their own associations, organised on grounds of ethnicity or religion. In order to highlight the diversity among ‘allochtonous’ or ‘ethnic minority’ women, they developed the label, ‘black, migrant and refugee women’ (Botman, Jouwe & Wekker, 2001; Captein & Ghorashi, 2001). Migrant women subsequently broke away from male-dominated ethnic associations and women’s associations dominated by native Dutch women. Their relations with those organizations have remained tense, while

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112 According to a poll conducted by TNS opinion & Social/ Eurobarometer in 2006, of the 25 European member states, the Netherlands ranks highest in supporting same-sex marriages (82 percent). Germany ranks 5th on the list (52%) and France 10th (48%). Same-sex couples in the Netherlands gained the right to civil partnership in 1998 and to marriage in 2001.
at the same time many have not survived the subsidy cuts of the 1990s. Today, only two national independent feminist umbrella organisation exist that lobby political authorities: the Dutch Women’s Council (‘Nederlandse Vrouwen Raad’, NVR), which comprises 47 mainly white feminist and women’s organisations, and Tiye International, an NGO that brings together 21 national black, migrant, and refugee women’s organisations. Also within state institutions, the ‘femocrat’ culture has largely disappeared (Outshoorn & Kantola, 2007b).

In Germany, gender cleavages have largely depoliticised once women entered government (Gerhard, 2008: 263). Femocrats and female deputies working inside state institutions continue to promote gender equality. Outside the government, there are professional organisations, grassroots initiatives, and feminists within women’s studies departments in academia. But similarly to the Netherlands, this fragmented women’s movement no longer mobilises together or develops joint policy goals. Women’s groups lack visibility and, moreover, fail to reach out to migrant minority women (Lang, 2007).

The German second-wave women’s movement emerged in the late 1960s. It mobilised against the symbolic and material oppression of women and opted for drastic social, political, ecological and cultural reforms in order to change a society that was marked by the heritage of Nazi Germany and a conservative, Christian culture regarding morality and sexuality (Ehmsen, 2008; Gerhard, 2008). As in France, the German ‘feminist’ movement was strongly affiliated with the student movement of the New Left, but unlike its French counterparts, it rejected the term ‘feminism’ as being elitist and bourgeois (Gerhard, 2008: 190; Ferree 1995: 96). Up until the 1980s, the women’s movement rejected any cooperation with the state, organising in autonomous women-only groups to dismantle the male-dominated society (Ferree, 2003a). It chose a radical ‘women centred’ approach, emphasising women’s control over reproduction and autonomy, focusing on issues like abortion and contraception rather than anti-discrimination employment policies (von Wahl, 2006). Their feminism was a ‘difference feminism’ which focused on re-evaluating women’s different qualities (Sauer, 2010). In contrast to France and the Netherlands, the BRD was not responsive to their claims for reproductive rights. The Federal Constitutional Court affirmed in 1993 that abortion was a criminal act, even though it was not to be punished in the first trimester and exceptions were recognised (Ferree et al., 2002).

During the 1980s, women started entering political parties, national women’s councils and political institutions (Ehmsen, 2008). The highly institutionalised nature of gender at various state levels served to depoliticise the autonomous movement. Only the German Women’s Council (‘Deutscher Frauenrat’) still functions as an effective advocacy channel for professional and cultural women’s organisations. It enabled women to book some successes in the late 1990s in the realm of sex-workers’ social rights, sexual violence, who also allied with the gay movement that successfully lobbyed for a Life Partnership Act (2001) that enabled same-sex couples to register (although legal inequalities remain in regard to welfare and tax schemes and reproductive rights) (Urbanek, 2007).

Only in the late 1990s, the first Muslim migrant women’s associations appeared, particularly in the federal states of North Rhine-Westphalia and Berlin where the largest
proportion of Turkish immigrants lives (Lenz & Schwenken, 2003, Lenz, 2008). Minority and majority women cooperated few times on common initiatives such as the ‘National Initiative for the Change of § 19 of the Foreigners’ Law’ (1993-1997), a loose coalition of feminists who successfully fought for an independent legal status for foreign spouses (Lenz, 2003). Nonetheless, migrant women have mainly focused on local, grassroots projects (Lenz & Schwenken, 2003), which are not represented by the German Women’s Council that mostly exists of native German women’s member organisations. Only since 2005 has it also includes a Federal Union for migrant women and a union for bi-national women. And whereas several Jewish and Christian women’s associations are members, no Muslim women’s association has so far joined.

Comparing conflicts around gender and sexuality in the three countries before the first hijab debates started, it appears that in France gender cleavages are still most salient. In the Netherlands and Germany, where the women’s movement made a ‘march through the institutions’, gender became an inconspicuous cleavage (Ehmsen, 2008). By contrast, an independent French women’s movement has continued to exist and extra-parliamentary mobilisation still occurs. Because gender in France continues to function as a fault line along which conflicts are articulated, we may expect the issue of the hijab to be most contentious in that country when framed in terms of gender and gender relations.

6.2.2 Laws, policies and institutions of gender

Gender equality machinery

**France** has developed an extensive women’s equality machinery at both national and regional levels. Its capacity to influence policy used to be limited because of its highly politicised and ever-changing nature, its lack of resources and its marginal position within the overall government structure (Mazur, 1995). However, over time, the gender equality machinery has become less dependent on political incumbency. It has consolidated at several national and regional levels and has gained a well-institutionalised position within the overall administration (Mazur, 2007).

In 1965, an advisory committee on women’s labour came into existence after pressure from the women’s movement. Ten years later, in 1976, President Valery Giscard d’Estaing appointed the first Secretary of State for ‘Women’s Conditions’ within the department of the Prime Minister (Revillard, 2007). The first office focusing on these issues with a significant budget and administrative staff was established in 1981 under a Leftist parliamentary majority and the Socialist President François Mitterand. The Feminist activist Yvette Roudy became the first Delegate Minister of Women’s Rights. Between 1985 and 1986, the office was upgraded to a full Ministry for Women’s Rights (‘Ministère des Droits de la Femme’, MDF). Thereafter, authority over gender equality shifted back and forth from delegations, secretaries of state, and delegate ministers to full ministers.

Since 1999, two parliamentary delegations on women’s rights and equal opportunities have been set up in both chambers of the French parliament. Their tasks include informing the chambers about the gendered implications of government policies, monitoring the implementation of legislation and giving annual recommendations.

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113 German migrant and black women came together for the first time in 1984 at the congress of ‘foreign and German women’ in Frankfurt. Black women have formed an organisation called ‘Initiative Black People in Germany’ (‘Initiative Schwarze Menschen in Deutschland’, ISD).
Moreover, in 1995, an ‘Observatory of Parity’ was created to study, promote and advise the government on gender equality in different public, economic and social spheres. The observatory consists of members of the parliament, scholars and women’s associations. And in 2001, the Government established a national commission composed of several state representatives and women’s associations to oversee the fight against violence against women (Jarty, 2007).

In 1993, a Women’s Rights and Equality Service was developed (‘Service des Droits des Femmes et Egalité”, SDFE), which is still responsible for the development and implementation of women’s emancipation policies. The budget of the SDFE remains small and many of its employees work part time, yet its overall position has consolidated within the state infrastructure (Mazur, 2007). The SDFE, which has been under the authority of different Ministries, has authority over the local network of equality offices that have developed in all 12 French regions and most of the 92 departments. Moreover, it has the authority over two permanent advisory bodies, the High Council for Equal Employment (‘Conseil Supérieur de l’Égalité Professionelle’, CSEP) and the High Council on Sexual Information (‘Conseil Supérieur de l’Information Sexuelle’, CSIS), as well as over state-funded non-governmental Women’s Rights Information Centres that exist at various state levels. Since the late 1990s, these two consultative bodies and the Women’s Rights Information Centres have convened on a regular basis to elaborate feminist policy (Mazur, 2007).

The relationship between the SDFE and women’s movements remains complex. Up until 2002, state funding was a closed and secret process, which made state support largely dependent on political power constellations. Women’s associations sometimes lost funding when power shifted to the Right. Moreover, only those associations formally registered with the state and sharing the Socialist ideals of PS feminocrats working within the state machinery were funded and included in policy debates while PS was in power (Mazur, 1995; 2007). Migrant minority women’s groups were largely neglected in policy-making processes around gender equality concerns. Only since the turn of the century have some migrant women’s associations found access to state machinery (see below). With a gender equality machinery that has expanded and consolidated over time in combination with a visible women’s movement, we may expect several feminist voices to gender policy debates on the hijab, albeit only for well-organised and resourced associations whose claims largely correspond with the dominant aims of the ruling parties.

In the Netherlands, an extensive gender equality machinery developed rapidly in the 1970s, but the institutional framework has diminished over time and taken on a more symbolic character (Kantola & Outshoorn, 2007; Outshoorn & Kantola, 2007). It no longer functions as a significant institutional venue for women’s voices, and its ability to gender policy debates and outcomes has been reduced.

In 1974, an Emancipation Commission was established to advise the Government on women’s issues (replaced by the permanent Emancipation Council in 1981). It comprised reform-minded feminists of the autonomous women’s movement and representatives of political parties. The Commission had to be consulted on women’s issues, but it could also initiate its own critical reports. It played a key role in defining the content and structure of emancipation policies until it was abolished in 1997. In 1978, Hedy d’Ancona of the feminist association ‘Man-woman-society’ was appointed State
Secretary on Emancipation, heading the Department of Coordination of Emancipation (‘Directie Coordinatie Emancipatiezaken’, DCE) (Verloo & Lamoen, 2003).

This administrative branch, which has been under the authority of different Ministries, is still responsible for the coordination and integration of emancipation policies within different Ministries, and it has its own budget to fund women’s movements. It was first located in the Ministry of Culture, Recreation and Welfare, but moved to the Ministry of Social Affairs when the focus shifted to women’s labour market participation in 1986, only moving back to the Minister of Education, Culture and Science in 2007. In other Ministries, civil servants were made responsible for women’s affairs, which were coordinated by the Interdepartmental Commission Emancipation (‘Interdepartementale Coordinatiecommissie Emancipatiebeleid’, ICE). In 1986, a Cabinet Committee for Emancipation was set up to coordinate gender mainstreaming in the various ministries. At the parliamentary level, deputies established the Permanent Standing Committee on Emancipation Policy in 1981, as well as an inter-party meeting group consisting of female deputies from the first and second chambers (‘Kamerbreed Vrouwenoverleg’) (Roggeband, 2002). Moreover, even without party quotas, the number of female deputies in the Dutch National Parliament increased more quickly than in Germany and France (see below) (Koning, 2009).

While rapid institutionalisation of gender in the Dutch policy machinery differs from the more incremental process in France and Germany, the institutional framework decreased significantly in the 1990s. Political elites began to downsize government agencies and cut the budget for equality programs (Outshoorn & Kantola, 2007). When the Cabinet Committee was abolished in 1991, no central coordination existed to supervise gender-mainstreaming within other Ministries, resulting in decreased attention being paid to gender. Additionally, the parliamentary Standing Committee on Emancipation Policy and the meeting group of feminist deputies were dissolved in 1994, while the Emancipation Council was abolished in 1997 (Roggeband, 2002).

Moreover, the DCE never became a powerful actor after losing the guidance of an independent Secretary of State on Emancipation in 1998. Nor has the ICE ever been a strong institution. It is therefore not surprising that the Dutch Review Committee, established in 2004 to evaluate gender mainstreaming, published a devastating report in 2007 that described how gender was not adequately taken into account in the policy of Ministries (Lauwers, 2007). Finally, many provincial and municipal women’s units (‘Emancipatiebureaus’) were dissolved due to subsidy cuts.

Furthermore, it proved difficult to develop a ‘velvet triangle’ with women’s activists and feminist scholars due to those groups’ troubled relationship with the DCE. Women’s movements have been involved in policy debates since the mid 1970s (Verloo & Lamoen, 2003). However, the state today increasingly relies upon feminist ‘experts’ rather than independent women’s associations, especially as the relationship of those associations to the state has become increasingly strained (Lauwers, 2007; Outshoorn & Kantola, 2007). While migrant minority women’s organisations have been encouraged to create umbrella organisations to be consulted, they have increasingly kept a critical distance from the state. Particularly when it became clear that they were expected to develop and execute projects in line with the policies defined by the state rather than to set their own agendas (Roggeband, 2010). In their comparative analysis of several European countries’ gender machineries, Outshoorn and Kantola (2007a) therefore conclude that the Dutch gender
equality machinery is one of the few that has weakened considerably over the years. Together with the weak character of the autonomous women’s movement, we may therefore expect a low visibility of feminist voices in Dutch policy debates on the hijab.

In Germany, an extensive equality machinery has developed over time at both the Federal and Länder levels, composed of Women’s Ministries or Departments and Equality offices (‘Gleichstellungsstelle’, previously called Women’s Commissioners, ‘Frauenbeauftragte’) (Ferree, 1995). However, substantial differences in the scope, power allocation and resources of gender equality institutions remain between the federal states. Political and financial support for the women’s equality offices depend largely on the party in power. Women’s policy offices are powerless in states, councils or towns ruled by Conservative governments, which tend to delegate gender issues to youth and family ministries (Ferree, 1995). Moreover, while the machinery has consolidated at the federal level, several Länder have witnessed substantial downsizing of their machineries since the mid-1990s (Lang, 2009).

The German gender machinery emerged in 1972, when the Social Democrat Government established a three-person staff in the family division of the Ministry on Health, Family and Youth. In 1986, the new Minister Rita Süssmuth of the CDU added ‘and women’ to the title, but her resources remained too limited to affect change (Ferree, 1995). At the local level, equality offices emerged in the 1980s in Western Germany. After reunification in 1990, different Eastern states were linked to different Western states and tried to copy the blueprints of their machineries, with the result that an established and well-integrated gender-equality infrastructure developed in the East as well. By 1993, all federal states of Western Germany had some sort of equality offices and a few states (Berlin, Hesse, and North Rhine-Westphalia) had passed antidiscrimination laws (Ferree, 1995). By 2004, 10 of Germany’s 16 states had established Women’s Ministries, 4 states had a commissioner for gender equality, and 2 states a department within the Ministry for Social Affairs handling women’s issues. At the Federal level, the Ministry for Family, Youth, Women and Seniors has a significant budget and staff to promote gender equality, fight discrimination, and instill positive measures on behalf of women. It regularly invites the German Women’s Council (‘Deutscher Frauenrat’) to negotiate on emancipation policies. As of 2009, Germany’s equality machinery consisted of more than 1900 local equality offices in cities and counties. Equality officers also exist in private firms, courts, hospitals, research institutes and universities. Sabine Lang (2009: 56) thus concludes that “formally, the German political system in the traditional institutionalist perspective provides a sound basis for agency on behalf of gender”.

In several Länder, however, the gender machinery has been downsized and emptied of resources, resulting in a reduced ability to produce substantive policy change. The joint Conference of Women’s and Equality State Ministers, which brought together all local equality officers on a yearly basis, was abolished in 2005 by a majority vote of the conservative Länder. Women’s issues had to be discussed during joint meetings of the state’s youth and family ministers, which not only conceptualized women only as mothers and wives, but also severely limited the bargaining power of the women’s departments (Lang, 2007).

Moreover, substantial differences exist between liberal, progressive city-states and conservative-ruled states in the annual budget provided for gender-related issues and in the feminist leadership of gender equality agencies. Eastern states that cooperated with SPD-
governed states have developed more efficient gender equality machineries than states that copied the blueprints of CDU ruled states. In some Conservative ruled states, gender machineries have degenerated to merely symbolic entities within the larger bureaucratic structure (Lang, 2009). At the local level, there are several migrant women’s grassroots organisations reliant on state funding, resulting in a professionalised and state-dependent project culture (Ehmsen, 2008). But while Berlin allocates a substantial budget for such women’s projects, conservative states like Baden-Württemberg offer only limited funds. Women’s movements remain largely invisible in national politics, having been reduced to a bargaining partner of the state (Lang, 2007: 139).

In sum, while the French gender machinery has consolidated and provides some amount of access to (mainly white) women’s voices to gender policy debates, the Dutch and German gender machineries (apart from the federal level) have suffered from neo-liberal downsizing and subsidy cuts and no longer provide many points of access for women’s associations. We may therefore expect French women’s movements, both within and outside the state, to be increasingly successful in gendering policy debates and outcomes, albeit only from the perspective of a selected group of white, native French women.

**Gender equality laws and policies**

**France** has a weak record in safeguarding women’s political rights. Between 1945 and 1997, women never constituted more than 6% of the deputies in the National Assembly or 3% of the Senate. Although in 1974 the Socialist Party introduced a sex-based quota of 10% for the party leadership and candidacies, which it raised to 30% in 1990, this never led to actual equality in party leadership. Feminist activists within the RPR never managed to rally support for such a quota. In 1999, the Parliament adopted a constitutional amendment to include a parity clause to augment women’s political representation, which was the result of active lobbying by women inside and outside of government. The parity law was passed on 6 June 2000 and requires that female candidates comprise half of electoral lists in municipal and regional parliamentary elections. The lists of the Senate and European Parliament must alternate candidates by sex; those for municipalities, regional assemblies, and the Corsican Assembly must have three women and three men in each group of six.

The Parity Law is remarkable in light of French difference-blind Republicanism. In 1982, for instance, the Constitutional Court nullified a Socialist Party amendment ruling that candidate lists in local elections should include no more than 75% of persons of the same sex. The Court argued that such a quota conflicted with Republican equality principles (Bereni, 2007). Only by strategically framing their cause in terms of parity (equity) and citizenship, rather than in terms of quotas or affirmative action, feminists working inside and outside state institutions succeeded in rallying enough support for the law. Nonetheless, most parties have still not complied with the 50-50 norm even after passage of the law. In 2002, only eight more women became deputies in the National Parliament, which accounts for an increase from 10.9 to 12.3%. Moreover, migrant women’s movements have criticised the law for not addressing the lack of representation of their interests and needs (Bird, 2001; Lépinard, 2007). In 2007, President Nicholas Sarkozy (UMP) embarrassed the Left by appointing three women of minority background into his cabinet: Fadela Amera as State Secretary for City Affairs, Rachida Dati as Minister
of Justice and Human Rights, and Rama Yade as Secretary of State charged with human rights and foreign affairs.

France has a better record of safeguarding women’s civil citizenship rights. French emancipation policies have particularly been devoted to equality in the legal and professional spheres, framing women’s issues in terms of equal rights and opportunities (Revillard, 2007). France was one of the first European countries to ban unequal pay after WWII, after the 1957 Treaty of Rome asserted this need. It introduced an Equal Pay Law in 1972, which was followed by several laws pertaining to equal employment policy. The previously mentioned High Council for Equal Employment is responsible for overseeing gender equality in employment. In 1983, France ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Jarty, 2007).

Since the passage of the Amsterdam Treaty (1997), the EU has become an important source for the expansion of women’s civil rights. The left-wing pluralist Government of 1997-2002 introduced new legislation to combat discrimination in the private sector and to increase women’s access to management positions in the French civil service. Also in the educational realm, various sensitising projects were developed to promote gender equality (Jarty, 2007). In 2001, it adopted a law to comply with the EU Equality Directives, which prohibit discrimination on various grounds in all stages of professional life, not limited to wage. Also significant is the 2004 creation of the High Authority to Fight Against Discrimination and Promote Equality (HALDE) (see chapter 5). The UMP Government that took office in 2002 has taken further steps to combat discrimination, but it has chosen rather soft policy measures instead of quotas or legislation. It created an ‘equality label’ for companies that actively fight against gender equality, signing a charter with major French trade unions in 2004 to tackle gender discrimination.

In regard to women’s social citizenship, France has long been characterised as having a moderate male-breadwinner model (Lewis, 1992; Hobson, 1994; Knijn, 1998). Familialism has historically been strong in French Republicanism, which values the institution of the family as the basis for social organisation (rather than individuals) and emphasises women’s caregiving role in the family sphere (Revillard, 2007). French family law and policies, which are the responsibility of the Ministry of Justice rather than of Parity (equality), have long been based upon a traditional nuclear family ideal and a gender norm of working mothers. In the 1970s, tax laws were adjusted so that they no longer penalised dual-income families, who received generous welfare benefits and maternity leave, in order to increase both birth rates and women’s labour-market participation (Misra & Jude, 2008). Working women benefited from the extensive state-funded child care

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114 Another law to promote professional equality was introduced in 1983, also named after Minister Yvette Roudy: Law No. 83-635 (July 13, 1983). It was followed by the Guénisson Act of 2001 to promote gender equality in the workplace, and a 2006 law to achieve pay equity between men and women: Law No. 2006-340 (March 23, 2006). See: Isabelle Carles (2008), ‘French Country Report’, Genderrace. The Use of racial anti-discrimination laws. To be retrieved from the website of the EC’s 7th framework Research project Genderrace.

115 Loi n°2001-397 du 9 mai 2001 relative à l’égalité professionnelle entre les femmes et les hommes.

116 Loi n° 2001-1066 du 16 novembre 2001 relative à la lutte contre les discriminations.

network, but this primarily sprang from the Third Republic’s struggle against the Catholic Church over the socialisation of young children rather than from gender equality concerns. The all-day nursery schools (which many children begin attending aged 2) set up to maintain the Church’s influence over children are still called mother schools (‘école maternelle’), indicating that children are the primary responsibility of French women. In addition, a fully state-funded crèche system exists for babies and toddlers (Morgan, 2003; 2009).

Since the 1980s, family policies have shifted against women’s employment. Rising employment rates led to family policies which subsidise mothers who stay home through paid parental leave (‘Allocation Parentale d’Éducation’, created in 1985 and further expanded in 1994). These policies particularly benefit larger families with lower incomes, making it disadvantageous for lower-income women to work. Part-time work is not well institutionalised, forcing women to either work full-time or leave the labour market altogether (Bleijenburg & Roggeband, 2007). Since the mid 1990s, the right-wing Government has weakened the crèche system and simultaneously developed new benefits and tax relief to support private childcare costs, which has been particularly advantageous for middle-class parents (Mahon, 2002). The Socialist Government that entered office in 1997 expanded the number of public childcare places. Moreover, it promoted parental leave for fathers, which indicates a change in the familialist gender ideology by identifying men as carers. Yet despite these efforts, 97 % of people taking time off or reducing their hours to take care of children are still mothers, not fathers.

France has only recently started to pay attention to the position of migrant women in its gender policies. In 2003, the High Council on Integration (‘Haut Conseil à l’intégration’) published a non-binding advisory document for the new UMP Prime Minister, in which it encouraged the Government to take action to address these women’s marginalised position. It encouraged the government to pay more attention to the specific ‘integration’ problems that migrant women face, situating issues like polygamy, forced marriages, parental authority, and female circumcision as problems imported by migrants’ culture. The Ministry of Employment, Social Relations and Solidarity responded by conducting several studies on the position of minority women. The then-Ministry of Parity (currently integrated in the Ministry of Employment) and the Ministry of Justice set up a working group of six government agencies that formally agreed in December 2007 to promote migrant women’s equality, to fight multiple forms of discrimination, and to foster their participation in social, educational and professional life. In 2003, the department

118 Family allowances and tax provisions for the family being distributed by regional family offices (‘Caisse Nationale des Allocations Familiales’, CNAF).
121 No. 2714, ‘Rapport d’activité au nom de la délégation aux droits des femmes et à l’égalité des chances entre les hommes et les femmes’ (November 30, 2005), presented by Marie-Jo Zimmerman (UMP deputy). See also the policy report ‘Femmes de l’immigration: assurer le plein exercice de citoyenneté, à part entière, à parts égales’ (March 7, 2005), signed by the then Minister of Justice, Dominique Perben, and the then Minister of Parity and Professional Equality, Nicole Ameline.
122 Accord-cadre relative aux femmes immigrées et issues de l’immigration pour favoriser les parcours d’intégration, prévenir et lutter contre les discriminations’ (Paris, December 27, 2007).
responsible for gender equality signed a convention with two other government agencies to increase migrant women’s equality and integration. The state created a National Commission to Combat Domestic Violence in 2005, which paid particular attention to violence against migrant women. Two laws were introduced in 2006 that criminalise forced marriages and female genital mutilation (FGM), which went hand-in-hand with sensitising projects to educate migrant women about their rights and ‘French’ values.123

In the Netherlands, women’s political citizenship has a relatively good record. While in 1971 only 10% of Dutch legislators were female, this increased to 30% by 1994 and 40% by 2005 (10% more than the European average of that time) (Koning, 2009). In 2005, 30% of the Dutch ministers in 2006 were female, including several with an ethnic minority background (Keuzenkamp & Merens, 2006). Women’s political representation has increased due to active feminist lobbying within and outside of parties (Oldersma, 2002). Only the Labour Party has a 50% quota, and since 1998 has alternated between women and men on their party lists for parliamentary elections (Koning, 2009: 179).

Dutch women’s civil rights have also improved over time. Until 1971, employers received dispensation for paying lower wages to women and, until 1973, employers could legally fire a woman because of pregnancy, childbirth or marriage (Misra & Jude, 2008). In order to comply with EC directives, the Government passed the Equal Pay Act in 1975 and, five years later, the Equal Treatment in the Workplace Act (amended in 1989) (Outshoorn, 1999; 2001). In 1991, the Netherlands ratified CEDAW, a transnational instrument that has proven to be an important tool for feminists pressuring governments to foster gender equality.

In 1994, the coalition Government of VVD, D66, PvdA introduced the Equal Treatment Act (ETA), which covers discrimination on several grounds including of sex and sexuality and also allows for sex-based affirmative action. The existing Equal Treatment Commission of Men and Women (‘Commissie Gelijk Behandeling m/v’), which had hitherto overlooked gender equality legislation, was transformed into a general Equal Treatment Commission that plays a central role in overseeing the implementation of the ETA, as well as other equal treatment and non-discrimination laws. However, Women continue to earn 22% less than men in the business sector and 14% in the public sector, and even after adjustment (of working hours, experience, position) an unexplained 7% pay discrepancy remains in the private sector and 3% in the public sector.124 The state continues to prioritise soft measures to tackle the gender gap in the labour-market, such as setting targets over quotas. For instance, the Purple Government passed the ‘Act on Representation in Advisory Bodies’ (1997) and the Act on ‘Proportional Representation of Women in Managerial Posts in Education’ (1997) (Verloo & Lamoen, 2003).125

‘Migrants’ include all foreign born women, regardless of nationality. ‘Foreigners’ refers to women with foreign nationality.

123 Law No. 2006-399 (April 4, 2006). A folder was circulated by the Ministries of Social Affairs, of Health, and of Gender Equality to warn against female genital cutting: ‘Protégéons nos petites filles de l’excision’ (June, 2006).
124 ‘Gender equality in the Netherlands’:
125 ‘Wet Evenredige Vertegenwoordiging van vrouwen in leidinggevende functies in het onderwijs’ (March 7, 1997).
In regard to women’s social rights, the Dutch state appears to lag behind. A familialist ideology remained firmly institutionalised in Dutch social welfare and tax policies until the mid-1990s, when the first cracks in this ideology occurred. Until a 1987 tax reform, which reduced but did not eliminate tax allowances for (male) breadwinners, the social security system left part of the breadwinner regime intact, with taxation systems still burdening second earners (Outshoorn, 1999). Not until 1990 did the Government pass a Stimulation Measure on Childcare that emphasised childcare provision as a way of encouraging women’s labour market participation (Bussemaker, 1998). In 1991, the Government introduced paternal leave, allowing either parent to work part time for six-month periods until the child turns eight. However, it is mostly women who make use of this prolonged leave and who continue working part-time after giving birth. Particularly during the two Purple coalition Governments (1994-2002), the idea gained ground that once women began working more and gained representative functions, their individual freedom would increase and a better balance would emerge between men and women in private life (Prins & Saharso, 2008). Several women’s movements’ goals were finally endorsed, such as providing public childcare facilities and unpaid parental leave in order to ease the combination of paid and unpaid labour (Bussemaker, 1998). The Government also introduced several acts to equalise part-time and full-time workers and enable more flexible and shorter working hours (Bleijenberg & Roggeband, 2007). And it started to intervene more directly in the private family sphere, by obliging women on welfare with children over five years old to apply for paid work.

Although significant improvements have occurred, policies continue to endorse a 1.5 male breadwinner to female care-taker model, by taking the family as a point of departure in tax benefits and stimulating part-time employment. Also illustrative of a persistent familialism is that in 2002, the new cabinet of the CDA, VVD and LPF coalition government reassigned a Secretary of State in the Ministry of Social Affairs with the name ‘Emancipation and Family’, again situating women in their primary role as mothers while simultaneously encouraging their labour-market participation (Verloo & Lamoen, 2003). Even though the Netherlands has one of the highest numbers of women employed (in 2008, 71% of Dutch women worked in paid jobs, compared to the average of 59% in Europe), it also still has one of the highest numbers of women in Europe working part time (Misra & Jude, 2008). From 2008 to 2010, the Dutch Government launched a ‘Taskforce Part-Time Plus’ to encourage women to take on more (yet part-time) working hours. In addition to women’s individual and cultural preferences, and the gender bias in tax law, the persistent lack of adequate and affordable childcare facilities, in combination with

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127 The average Dutch woman works only 25 hours a week, and only one third of the female population is economically independent. In 2005, only in 8% of couples with young children women were working full-time, whereas in 52% of couples women worked part-time (most often between 20-34 hours a week) and in 40% women did not work at all (Portegijs, Hermans & Lalta, 2006; Portegijs et al., 2008).
mismatched school and business hours, may explain why so many women leave the labour market or reduce working hours when having children.

Finally, in contrast to France and Germany, Dutch gender policies have paid some attention to minority women’s emancipation since the 1980s. In 1982, the Emancipation Council already called upon the Dutch Government to initiate special policies to stimulate their emancipation. Through so-called ‘Women and Minorities’ projects (‘Vrouwen en Minderheden’, VEM-project, a collaborative initiative of the Ministries of Emancipation and Integration that ran from 1982-1994), the Government aimed to increase minority women’s education levels and labour market participation\textsuperscript{128} (Roggeband & Verloo, 2007).

Similar to France, migrant women moved from the ‘margins into the spotlight’ after the turn of the century (Prins & Saharso, 2008). This went along with a shift in attention from structural obstacles to emancipation – like education and labourmarket discrepancies - to problematic aspects of migrants’ culture (Roggeband & Verloo, 2007). From 2003 to 2005, the Ministries of Emancipation and Integration of the Balkenende II cabinet (CDA, VVD, D66) installed a temporal advisory commission, Commission Pavem/Rosemöller, tasked with improving migrant women’s position and stimulating their social and labour-market participation through language courses, networks and rolemodels.\textsuperscript{129} However, in the Emancipation Policy Plan of 2006-2010, the Government already abandoned the general goal of economic independence for certain categories of (older) migrant minority women. Instead, it focused on increasing their ‘social participation’ and strengthening their position through unpaid voluntary work. Moreover, under a new heading of ‘security’ the Policy Plan focused on preventing and combating violence against women, with a special focus on ‘culturally’ legitimised violence such as FGM, honour killings and forced marriages. The Government even initiated a ‘Priority’ project (‘groot project’) to tackle honour-related violence, which is quite remarkable because that label is normally only attributed to large infrastructural projects and requires extensive ministerial reporting regarding its financial or social implications (Brenninkmeijer et al., 2009). While the government thus focuses on increasing improving the labour-market and managerial position of native Dutch women, it approaches migrant minority women primarily as victims of their problematic culture and secondary as agents of cultural change (Roggeband & Verloo, 2007)

\textbf{Germany}, like the Netherlands, has a relatively high record in women’s political rights. This has partly been the result of quotas. In 1986 the Green Party set the standard for the other parties with the introduction of a women’s quota of 50 %. The Social

\textsuperscript{128} Unemployment figures among women of migrant origins are 2.5 times higher than among native Dutch women. Particularly high numbers of Surinamese and Dutch-Antillean women are unemployed, yet their net labour-market percentage is higher than native Dutch women (61 % compared to 59 %). Turkish and Moroccan women’s labour-market percentage is much lower with respectively 37% and 38 % in 2003, yet generational differences exist, with the second generation being employed in equal numbers with men (Keuzenkamp & Merens, 2007).

\textsuperscript{129} Commission PAVEM (July 3, 2003 - July 1, 2005) was chaired by the former leader of the Green Party Paul Rosemöller, and also comprised the Dutch Princess Maxima, Hans de Boer (former chair of the Dutch interest-organisation for small and mid-sized businesses), Lilian Calender (director at Inholland, a higher educational establishment for vocational training), Yasemin Tümer (managing director at KPMG, a Dutch telecom company); and Hans Dijkstal (former Minister of Interior Affairs). It was installed by the then-Minister of Foreigners’ Affairs and Integration, Rita Verdonk, and the Minister of Social Affairs and Labour (including women’s emancipation), Aart-Jan de Geus.
Democrats introduced a quota in 1987, which aimed at establishing 25% women. In 1998, it increased the quota to 40%. The Christian Democrats decided in favour of a 33% quota for women in 1996, and PDS/die Linke introduced a 50% quota in 1994. The Christian Social Union CSU and the FPD have not introduced any quotas, resulting in a significantly lower female representation (von Wahl, 2006; McKay 2004). In 1998, women made up 32.8% of members in the Federal Parliament. The then SPD-Green coalition Government included a record five out of fourteen ministries headed by women (Lang, 2007: 129). In 2008, the number of women in the Federal Parliament decreased slightly to 31.2%, while women held 6 out of 16 cabinet posts (Meyer, 2003). At the Länder level, however, the average rate of male to female legislators is much lower, at 14 to 1 (McKay, 2004).

Regarding civil rights, Germany has a poor record in contrast to France and the Netherlands. Until the late 1990s, the German state largely approached women as a social group defined by their primary role in reproduction in a heterosexual marriage. A clear line between ‘public’ (male) matters of production and ‘private’ (female) matters of reproduction was underlaying the state’s governing strategies (Ferree 2007). Even though Article 3 of the 1949 Basic Law guaranteed equal political rights for women, it was not seen as guaranteeing women’s civil rights in the family and the labour market (Berghahn, 2003). The Federal Constitutional Court allowed unequal pay between men and women well until the 1970s. Until 1977, the German civil code explicitly depicted married women (but not married men) as homemakers with the legal duty to fulfil their home duties before they could justify working outside (a codification that had been abolished in the Netherlands in 1956 and in France in 1965). Only after the threat of a lawsuit that would have brought Germany before the European Court of Justice was a modest Equal Pay Act passed in 1980. No Equal Treatment Committee was established to oversee its implementation and no meaningful penalties were introduced for violators. Only in 1988 was the indirect form of unequal pay for so-called ‘light work’ in firms in which only women worked (‘Leichtlohngruppen’) abolished (von Wahl, 2006). The 1994 Federal Employee Protection Law, moreover, only weakly protects women from sexual harassment (Zippel, 2006).

In 1998, a more gender-sensitive Red-Green coalition took office, consisting of the Green party and the SPD. In 2001, it implemented a Gender Equality Enforcement Act to promote women’s employment in government administration, utilizing a flexible quota system, the prohibition of indirect discrimination, more transparency in the hiring of staff and improving the status of gender equality offices (that replaced the Women’s Promotion Act of 1994). However, equal opportunity regulations are still missing in private sector, which may explain why Germany still has a 24% income differential between male and female full-time employees – the highest in Europe (von Wahl, 2006: 447) (Berghahn, 2003; von Wahl, 2006). A proposal to introduce an affirmative action law for the private

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130 Not all parties managed to fulfil their quotas. While the Social Democrats missed their quota of 40% only marginally in 2002, the Christian Democrats missed their 33% quota by more than 10 percent with 22.6% percent female deputies in Parliament. The conservative Catholic CSU party and the Liberal FDP party, had 13% and 26% female legislators respectively, and a fully male leadership (Rostock & Berghahn, VEIL country report Germany, January 2007).
sector failed: only a non-binding agreement exists in which businesses promise to take steps to foster gender equality in hiring and promotion.\textsuperscript{131}

Opportunities to push for equality legislation were found at the international level. In 1980, the GDR ratified CEDAW and the FGR followed suit in 1985.\textsuperscript{132} Preceding the 46\textsuperscript{th} UN World Conference on Women in 1995, the Government amended the Basic Law to include a requirement that ‘the state should enhance the factual implementation of gender equality and eliminate all existing discrimination’ (Urbanek, 2007: 5). The Equal Treatment Act (‘Allgemeine Gleichbehandlungsgesetz’, AGG) only entered into force in August 2006.\textsuperscript{133} This was again mostly the result of pressure from the EU, which had started an enforcement process against the German state for non-implementation of its Equality Directives (von Wahl, 2006; Rottmann & Ferree, 2008). The Act is only a greatly weakened version of the initial draft made by the SPD-Green Government, because conservative states in the Bundesrat had succeeded in rejecting prior versions. On 31\textsuperscript{st} January 2008, the EU Commission reprimanded Germany again for non-compliance with EU law.

In regard to women’s social rights, West Germany has long exemplified the typical male-breadwinner model. Up until the late 1990s, German emancipation policies were seen as ‘women and family’ policies, rather than gender equality policies. The Christian Democrat-led Kohl Government (1982-1998) introduced various policies that strengthened both the traditional nuclear family and the male breadwinner model, encouraging women to stay at home to take care of the children. Tax benefits continued to place high penalties on working wives by reducing the family benefit if women work more or have no children (Hantrais, 2004, von Wahl, 2006).\textsuperscript{134} The GDR, by contrast, encouraged women’s participation in the labour market. East Germany also fostered equality between men and women through quotas in the legislature and laws mandating support for working women and single mothers. After the reunification in 1989, when Eastern German states copied gender policies of the West, women’s opportunities to attain economic independence significantly decreased: while 86 % of Eastern German women aged 18 to 59 were employed in the 1990s, this number had dropped to 50 % by 2004 (Lang, 2007). Differences continue to exist today between the two regions, with women in the ex-GDR more strongly favouring a working mother role and more frequently having children while

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{131} Also a motion of the Bündnis 90/Die Grünen that provided for a 40 % quota in all advisory boards of companies listed in the stock market was rejected by the CDU/CSU, the SPD and the FDP (Urbanek, 2007: 5).
\item \textsuperscript{132} The FGR included a reservation that women were not allowed to join the army, which was withdrawn in 2001.
\item \textsuperscript{133} Directive 2000/43/EG (anti-racism); Directive 2000/78/EG (framework directive for occupation and profession); EC 2002/73/EG (gender equality directive). Only Directive 2004/113/EG has not yet been comprehensively converted. See Czarina Wilpert & Christiane Howe (August 2008), ‘Germany Country Report’ of the project Genderace. The use of racial anti-discrimination laws, an EC sponsored project that compares the intersection of gender and race in European discrimination frameworks.
\item \textsuperscript{134} Such as a parental allowance of €300,- p/m (‘Erziehungsgeld’), parental leave that benefited middle-class traditional male breadwinner-housewife couples (‘Erziehungsurlaub’), child tax credits (‘Kinderfreibeträg’), the increase of existing child allowance (‘Kindergeld’) and incorporating care in mother’s old age benefits. Moreover, despite an increase in childcare provisions for children aged 3-6, most services close before lunch. In 1998 in East Germany, after-school care was much higher than in West Germany (von Wahl, 2006: 472).
\end{itemize}
\end{footnotesize}
unmarried, and with men also taking up more household and childcare responsibilities than in the West (Ferree, 2010: 201).

Some changes have occurred in the male breadwinner logic in Germany’s family policies during the late 1990s, when the Red-Green coalition cabinet took office and women’s policies changed into gender policies. In 1998, the cabinet legally endorsed the goal of gender mainstreaming (but the central steering and implementation committee at the federal level has been abolished in 2007 by the current Conservative government). The Schröder Government also focused on men’s caregiver responsibilities by renewing parental leave in 2001, developing childcare policies to expand public facilities for three-to-five-year-old children, and institutionalising part-time work more firmly. Nonetheless, Chancellor Schröder himself only half-heartedly supported the feminist agenda, publicly declaring in 1998 that women’s equality concerns were a ‘fuss’ (Ferree, 2010: 198). No significant changes occurred in the tax system, which continues to be based on family income and indirectly punishes second earners, in addition to allowing only very limited tax deductions for child care or domestic services. Moreover, his Government’s neomarket liberalisation policies in the labour-market and welfare state, including the so-called ‘Hartz reforms’, had several indirect gender discriminatory effects, making women more dependent on their husband’s incomes (Lang, 2007). Policies thus complement rather than change the breadwinner logic (von Wahl, 2006; Berghahn, 2003). Women’s labour market participation continues to be low.

Much in line with its conservative gender regime, the state has long approached migrant minority women as family spouses of male labour migrants. An arriving spouse was barred from employment for four years (two years since 2000). Even though Schröder’s Government improved migrant women’s access to an independent residence permit after two (instead of four) years of marriage, women continue to be discriminated against indirectly through the requirement of five years of social insurance contribution (Sainsbury, 2006: 235). Only in 2005 did the Federal Ministry of Family, Seniors, Women and Youth start focusing on the emancipation of girls and women with a migrant background, initiating several studies. It started special mentoring projects for migrant girls to encourage their labour-market participation and ‘to discuss gender roles of their own and their new culture’. Also in a particular section of the Federal Integration Plan of

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136 The Harz reforms consist of a set of laws that restrict access to unemployment insurance, social assistance and qualification and retraining programmes for people in relationships where one of the partners has sufficient income to sustain his/her partner. Since men are still the predominant earners within the family, it makes women particularly economically dependent on men. In conjunction with policies that delegate responsibilities such as childcare provision to cities and counties without transferring adequate funding, they renew an implicit male breadwinner model (Lang, 2007: 129).

137 In 2004, 59.2% of female Germans were in the labour-force, with 41.6% percent of them fulfilling part-time jobs (in contrast to 6.5% men). In 2003, 60 % of women of employable age with children under the age of 12 were in full-time jobs (von Wahl, 2008).


139 Bundesministerium für Familie, Senioren, Frauen und Jugend, ‘Migrationshintergrund als Chance & Potenzial’ (June 1, 2007). Pressstatement.
2007, attention was paid to the position of migrant girls and women. Its primary goals were improving migrant women’s citizenship rights, augmenting their participation in the labour market, and combating gender violence. Similar to the Netherlands and France, forced marriages, trafficking women and FGM played an important role in policy debates on restricting family migration, which focused on migrants’ cultures as an obstacle to integration. The Federal Ministry established a working group to tackle such problems, which brought together various local and national experts, women’s associations, Islamic umbrella organisations, and ministries.141

To sum up, some differences exist between the three countries’ equality policies. France and, to a lesser extent, the Netherlands have established several policies and laws to foster formal equality, non-discrimination and equal opportunities, as well as equality bodies to overlook the implementation thereof. I therefore expect a greater emphasis on gender equality and sex discrimination in hijab debates in France and the Netherlands than in Germany, with the difference being that in France the emphasis will lie on sex only and in Netherlands also on intersecting grounds of ethnicity. In Germany and the Netherlands, I expect a greater tolerance for female-specific practices like veiling than in France, where the French state officially approaches women as individual citizens (but simultaneously disregards the gendered division of labour in ‘the’ private sphere and identifies women as mothers as primarily responsible for the care of children). Because of the increasing focus on migrant minority women in all three countries’ emancipation policies, I expect an converging focus on the status and rights of hijab-wearing women, with a particular problematisation of their culture.

6.2.3 Political allies for claims of gender equality and recognition

In France, gender cleavages cross-cut right-left cleavages. Women’s movements allied with the Socialist Party in their advocacy for an equal opportunity law in employment in the 1980s (Mazur, 1995) and again in the late 1990s. They also found support on the Left for their drive for a Parity Law (Chambon, 2002). Familialist ideologies have, in contrast, long permeated the ideology of the Gaulist RPR, which has objected to changes in tax legislation, or family policies that challenged traditional, heterosexual gender norms (with the UMP continuing to oppose the access to marriage in 2006). Nonetheless, feminist coalitions around reproductive rights and protection from domestic violence did benefit

140 Forced marriages received particular attention when a new Immigration Act came into effect in January 2005 that restricted the right to family migration through age limits and civil integration tests abroad. The Federal parliament also passed a bill in October 2004 that designated forced marriages as severe offences of coercion, which was followed by another bill introduced by the conservative-ruled Federal Council to criminalize forced marriages sui generis, with a term of imprisonment between six months and ten years (Rostock & Berghahn, 2008). See also: Kreinbrink, Axel & Rühl, Stefan (2007), ‘Family Reunification in Germany. Small scale study IV in the Framework of European Migration Network. Working paper 10 der Forschungsgruppe des Bundesamts’ (Federal Office for Migration and Refugees).


142 Since 1983, approximately half of French women aged 25-54 have worked full time and 12 to 16 % women part time. Although women’s part-time work has increased, those working part time still work on average 34 hours a week (Misra & Jude, 2008).
from feminist support within (centre-) Right parties. Moreover, gender-related issues regarding women’s employment have increasingly started to transcend traditional Left-Right cleavages, with both sides increasingly favouring work-family reconciliation policies (Revillard, 2007).

Furthermore, the right-wing UMP Government of 2002 made gender equality one of the priorities on their agenda and upgraded the agency responsible for it to a full Ministry with a significant budget (Mazur, 2007). Some migrant women’s movements have found allies among the UMP when politicising sexual oppression and violence in migrant neighbourhoods, such as the association called Neither Whores Nor Submissive (‘Ni Putes Ni Soumises’, NPNS). Some of its chairwomen had previously been working in a local association that cooperated with the PS satellite organisation SOS Racism. When a young girl of Moroccan background was brutally murdered in a Paris suburb by her boyfriend in October 2002, a local gang leader, the women’s movement organised a march through France from February to March 2003, drawing attention to sexual violence.\footnote{One of the chairwomen of NPNS also released a book on collective rapes among migrant youth that triggered a public debate and helped draw attention to violence against women of ethnic minority backgrounds living in the French suburbs: Bellil, Samira (2003), \textit{Dans l’enfer des tournantes} (‘In gang-rape hell’), Paris: Gallimard.}

Partly because its cause fit the UMP’s agenda of augmenting public security in the banlieus, it managed to draw the attention of important stakeholders on the Right for migrant women’s status (Ezekiel, 2006; Tickcin, 2008). We may therefore expect that until the turn of the century the Left will draw attention to gender equality concerns in hijab debates, followed by the UMP after the turn of the century that will use a protective discourse.

In the \textit{Netherlands} the women’s movement has also allied with the Green, Social Democrat and Liberal Democrat parties. The Social Democratic Party’s women’s commission, ‘Women’s Contact’ (‘Vrouwencontact’), played a key role in successfully introducing feminist demands into the party platform in the 1980s. The Greens have also included many feminists, being led by a female party leader since 2002, while the Liberal Democrat party has a high record of defending women’s and gays’ civil rights (Oldersma, 2002). The Purple coalition Government of VVD, D66, PvdA (1994-2002) also responded to several demands of the women’s and gay movement regarding part-time work and equal rights. The Christian Democrat party and particularly the smaller Christian Union parties, by contrast, have mainly defended women’s roles as mothers in the family (Outshoorn & Kantola, 2007).

After the turn of the century, some alliances occurred between the Left, the conservative Liberal party and the Christian Democrat party in regard to migrant women’s rights, such as when Ayaan Hirsi Ali was elected a member of parliament in 2003 for the VVD. For instance, in 2003 Hirsi Ali launched a proposal with representatives of the Greens and the Christian-Democrats to grant rights to immigrant wives who had been left by their husbands.\footnote{No. 95, ‘Interpellatie Hirsi Ali over het achterlaten van vrouwen en kinderen in Marokko, Handelingen 2003-2004, 2e kamer’ (September 14, 2004)} Nonetheless, her fierce criticisms of Islamic culture and practice also quickly estranged potential allies on the Left, and particularly the Muslim migrant women she claimed to represent (Ghorashi, 2010). Populist right-wing parties like Fortuyn’s LPF and Geert Wilders’ PVV have currently adopted her discourse of blaming Dutch
multiculturalism for undermining women’s rights in a ‘clash of civilisation’ discourse (Akkerman & Hagelund, 2007). While we may particularly expect a gendered discourse among left-wing parties, a convergence may thus occur over time between the Left and the Right in politicising women’s concerns and gender power relations.

In Germany, gender cleavages have largely divided the progressive secular left-wing parties from conservative Christian and Liberal parties. Feminists joined the Green party, which explicitly labelled itself in feminist terms when it was established in 1982. The Left Party, Die Linke, has also become a strong advocate of gender-equality concerns. Gender equality machineries have also been the most extensive and powerful in federal states that are ruled by left-wing governments, whereas conservative-ruled governments have blocked claims for gender equality and non-discrimination and have primarily advocated for women’s role in the family (Ferree, 1995; Lang, 2007). Nonetheless, both CDU- and SPD-ruled governments have supported the male-breadwinner model. Supporting labour and business interests, the Social Democrats have not always supported the feminist agenda regarding work and family (von Wahl, 2006). The FDP has also traditionally been protective of the private sphere of the family and wary of the state interfering in the market to promote women’s employment and opportunities. We may therefore expect that the Green party in particular will draw attention to the rights and status of women in the hijab debates.

6.3 Conclusion

This chapter compared gender cleavages, gender machineries and gender policies in the Netherlands, France and Germany. I expect some differences in the gendering of policy debates about the hijab, with French debates being most contentious when framed in terms of gender equality, due to the extra-parliamentary mobilisation of independent women’s movements. French women have over time gained more favorable opportunities for involvement in policy debates, albeit only those with close ties to the gender machinery. In Germany and the Netherlands, feminist gendering is to be expected from femocrats working within state institutions and political parties. I expect policy frames that focus on women’s formal equality regardless of sexual difference to be most resonant in France, followed by the Netherlands, which both have a higher record of civil rights, equal treatment and non-discrimination than Germany. Because Dutch emancipation policies have a longer record of fostering migrant women’s labour market participation, frames may pay more attention to discrimination in the labour-market on grounds of inequalities related to intersecting gender and ethnic differences. In all three countries, I expect the hijab debate to be increasingly gendered due the recent increasing focus in emancipation policies on migrant women’s status and rights, with the both the Right and Left in France and the Netherlands politicising gender. Table 4 summarizes my expectations for all three countries on grounds of gender cleavages, legal frameworks and policies regulating gender relations and the representation of gender in the party system.
Table 4 Expectations regarding the POS for hijab-wearing women as gendered actors

<table>
<thead>
<tr>
<th>Gender cleavages</th>
<th>France</th>
<th>Netherlands</th>
<th>Germany</th>
<th>Expectations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Rather pacified but still autonomous women’s movement visible; stronger equality feminism</td>
<td>Rather pacified cleavage; stronger difference feminism</td>
<td>Rather pacified cleavage; stronger difference feminism</td>
<td>When framed in terms of gender (equality), most salient issue in France where women’s movement may mobilize</td>
</tr>
</tbody>
</table>

| Gender machinery and gender equality laws and policies | Strong emphasis on gender equality/ non-discrimination; social rights based on norms of (full-time) working mother; only after turn of century attention for migrant women. Consolidated gender machinery, but low representation of women in politics: access for (mainly native French) women’s movement improves over time | Moderate emphasis on gender equality/ non-discrimination; social rights based on male breadwinner and (part-time) female care taker; already scant attention for migrant women before turn of century. Weakened gender machinery, but high representation of women in politics: access for (also migrant) women’s movement decreases over time | Low emphasis on gender equality/ non-discrimination; social rights based on male breadwinner and female care taker; only after turn of century attention for migrant women. At federal level gender machinery consolidated and high representation of women in politics, but weakened at regional level: little access for (particularly migrant) women’s movement | Most favourable and increasing opportunities in France to gender policy debates in terms of equal rights/ opportunities for girls/women, and then in the Netherlands where opportunities decrease. In all three countries convergence in emancipation policies focusing on migrant women = convergence in gendering of headscarf debate |

| Political allies for claims of gender equality and recognition | Particularly among left-wing parties (PS/Greens/PCF), but later also among UMP: increasing opportunities to gender policy debate | Particularly among left-wing and Liberal Democrat parties (Greens, PvdA, D66), least among Christian parties: decreasing opportunities after turn of century | Particularly among Greens, Die Linke and to lesser extent SPD, least among Christian parties: favourable opportunities in SPD ruled Länder to gender debate | In all three countries, most attention for gender equality and women’s rights when Left rules the country or federal state. In France also some opportunities among the Right after turn of century |

| Expectations for each country on grounds of women’s emancipation policy paradigms | Debate contentious when framed in terms of gender equality: focus on equal rights. Women’s movements increasingly involved in policy deliberations | Debate less contentious when framed in terms of gender equality: more focus on gender difference. Little involvement of women’s movement in policy deliberations | Debate less contentious when gendered: focus on gender difference not on gender discrimination. Little involvement of women’s movement in policy deliberations | }
Part 2. The political process on the hijab in France, the Netherlands and Germany

The next three chapters analyse the politicisation of the hijab in France, the Netherlands and Germany. The aim is to ascertain the extent to which the general and issue-specific opportunity structures elaborated upon in the previous chapters have shaped the contentiousness, framing and regulation of the hijab. In order to answer this question, the chapters in this Part will analyse the time span of the debates, the actors involved, the problems they tabled and the solutions they suggested, as well as the outcomes of these framing contests. Because the issue first became contentious in France, Chapter 7 starts with an analysis of the policy process there. This is followed by an analysis of the Dutch debates and regulations in Chapter 8, and the German case in Chapter 9.

The structure of these chapters will be the same. First, I will describe the saliency of the issue in the political realm in each country, elaborating upon the types of hijab which became contentious, as well as when and in what setting (schools, public service functions, private sector etcetera) this took place. Second, I will analyse which actors were involved in politicising the issue. Third, I will elaborate upon the policy-formation process and the different policy responses formulated by authorities over time. Fourth, I will discuss the different problems tabled in the hijab debates, the solutions suggested for managing these, and how different actors negotiated these diagnostic and prognostic frames. Each chapter will be concluded with an analysis to what extent my findings matched the expectations that were raised in the previous chapters on each country’s general and issue-specific opportunity structure. In Chapter 10, I will summarise my findings in a cross-national analysis.

7.1 Introduction
In this chapter, I will analyse the policy-formulation and policy-making processes concerning the hijab in France, including the discursive politics within the state preceding policy outcomes. Various scholars have argued that French traditions of strict secularism, laïcité, and its national identity of a singular, non-differentiated Republican citizenship explain French bans on headscarves in public schools (Freedman, 2004; Galleotti, 1993; Joppke, 2009). In this chapter I will show that institutionalised practices of laïcité and Republican citizenship were indeed very important in making the wearing of headscarves in state schools so contentious in France, but I will also nuance this assumption.

First, laïcité and Republican citizenship were in themselves contested concepts that gained different meanings during the hijab debates and, moreover, shifted over time. The ban on conspicuous religious symbols in public schools passed by the French Government in 2003 did not naturally or logically follow from preceding policies and institutions. There had been no previous institutional obstacles to accommodating religious symbols in schools; in fact, traditions of laïcité had never demanded pupils to privatise their faith in Republican schools. Only when the headscarf was linked to concerns about social fragmentation and a politicised Islam encroaching upon individual liberties of Jewish minorities and girls, a consensus emerged that laïcité required the privatization of religious identities in public schools.

Second, institutional patterns cannot explain why only in 2003 such restrictive legislation was passed and not in 1989, when the pupil’s hijab for the first time figured on the political agenda. In order to explain such changes over time, it is necessary to take into account the changing social and political context, including shifts in party constellations. The emergence of a right-wing Government in 2002 created new political opportunities for advocates of a law that relegated religion out of the public school. Also the Socialist Party became less tolerant. Several feminist and anti-discrimination movements successfully linked their concerns about sexual violence and anti-Semitism to the dominant political discourse on hijabs, contributing to a discourse coalition favouring restrictive legislation.

Third, international developments like the Algerian civil war in the mid-1990s and September 11th indirectly influenced the policy debate on the hijab by enabling frames that focused on the danger of a radical Islam for national values.
7.2 Debates and policy responses

7.2.1 Time line and saliency

Figure 2 Political contentiousness of hijab in France (1989-2007)

In France, the headscarf has been a recurring political issue since 1989, with three clear periods of heightened contestation in 1989, 1994 and 2003-2004 (see figure 2). From 1989 until 2007, 51 questions were raised concerning the hijab, with all but six focusing on pupils’ right to cover (three others focused on the hijab on passports or on students’ identity cards, and one on hijabs for nurses). Most of these were written questions (33), answered within two months by the designated Minister in a letter published in the parliamentary daily ‘Journal Officiel’ (JO). Three questions were raised during the weekly question hour, and fifteen during one of the two weekly meetings with the Council of Ministers.145 Finally, 15 law proposals were submitted between 1989 and 2004, all aimed at banning religious symbolism in public schools.

Up until 2003, no legislative proposals on the hijab were proposed for plenary debate.146 In January 2004, however, the Government submitted a law project that was

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145 During the weekly question hour, the (deputy) Minister has the right to select questions for a personal response. Parliamentary questioning is no effective means to criticise the Government’s public (non) policies (Lazardeux, 2009). More effective are the so-called Questions to the Government during the meetings with the Council of Ministers, when each parliamentary group gets five minutes to raise and discuss questions with the Government, whose responses are broadcast live on the Government’s public channel. Due to a constitutional reform in 1995, the number of sessions devoted to parliamentary questioning doubled. This led to increased amounts of questions and the capacity of the legislature to control the government (Lazardeux, 2009). But there has been no significant increase of questions about the hijab issue since 1995.

146 The Chairmen’s Conference decides whether and which law proposals and projects are proposed for plenary debate. It consists of the President of the Assembly, six Vice-Presidents, the chairmen
adopted by a majority in Parliament in February and implemented the subsequent school year. It prohibits the display of all ‘ostensible’ religious symbolism in public primary and secondary schools, meaning the hijab, large crucifixes and kippahs. The law does not apply to university students.

The debate’s timeline does not reflect a steady increase of conflicts over headscarves in public schools. Conflicts were scarce before the law was implemented. The Minister of Interior, Nicolas Sarkozy, claimed in 2003 that out of 250,000 Muslim schoolgirls, 1,256 insisted on wearing the hijab, and that only 20 caused problems, of whom four were expelled. Also after the implementation of the law, there were only 48 cases of expulsion for hijab-wearing Muslim girls and three for turban-wearing Sikh boys between September 2004 and April 2005. According to the Minister of Education, Francois Fillon, only 110 out of 639 girls refused to remove their headscarves, and most accepted the regulations of the school after dialogue (Laurence & Vaisse: 170-171; Winter, 2006: 285). While the low amount of conflict after the introduction of the law was taken as indicative of the large support for the law, used to relativise the costs of legislation, the question remains whether the disciplinary (and rather repressive) strategy of the state actually resolved the tension between Republicans’ insistence on a secularist and ostensibly colour-blind citizenship ideal and citizens’ claims of recognition for their multiple identities (Scott, 2007).

The French debate focused on pupils’ (and not teachers’) rights to cover, and did not carry over to other realms such as the civil service or judiciary. Few conflicts have emerged regarding headscarves worn by employees in private sectors of the labour market, but these have not been addressed in the Parliament. This is not indicative of a general tolerance of religious dress in other public domains. Rather, as we will see, deputies disagreed whether pupils could express their religion in public schools, but never even discussed the option of headscarves for civil servants. Deputies have also never challenged the State Council’s opinion of May 3, 2000, which argued that civil servants, including school teachers and school inspectors, may not manifest their religious beliefs during work

of each parliamentary group, and the Secretary of the Finance Committee (and, since 1995, also the chairman of the Delegation for the European Union). Law proposals which are proposed for plenary debate are first sent to one of the six (currently eight) permanent Parliamentary Committees for consideration (or to a temporary ad-hoc Committee). Standing committees consist of one of the 577 deputies who are appointed by the Assembly by proportional representation of the parliamentary groups; each committee thus reflects the Assembly’s political composition. The hijab issue generally falls under the remit of the Committee of Cultural, Family and Social affairs (140 members) or Committee of Laws (about 70 members). Other committees are the Committee of Economic Affairs, Environment and Territory (currently split in two separate Committees of Economic affairs and of Environment and Territory), the Committee of Foreign Affairs, the Committee of National Defence and Armed Forces and the Committee of Finance, General Economy and Planning. Currently, the Committee of Social, Cultural and Family affairs has been split in two separate Committees (of respectively Cultural affairs and Education, and of Social affairs), making a total of eight Committees.

147 This was the conclusion of the Human Rights Commission (Commission Nationale Consultative des Droits de l’Homme, CNCDH) in its report called ‘La laïcité aujourd’hui’ (December 2003). Its finding was confirmed by the research of the Debré commission.

148 On December 17th 2002, for instance, the Paris Labour Court concluded that a trans-national telemarketing company had illegally sacked an employee for wearing a headscarf. Although French workplace legislation (‘Code du Travail’) allows employers to restrict individual freedoms, they must prove that this is necessary for the function in question, or for security (Cadot et al., 2007).
for reasons of impartiality and neutrality. This duty has also applied to health workers in public services, as well as to court personnel. When in 2004 a conflict arose in which a lay judge was asked to remove her headscarf, the Government decided without further controversy that lay judges and clerks who assist the audience in court may be required to wear clothes that convey ‘an attitude of dignity and respect for the justice system’. It is up to the judge in question to decide whether someone has jeopardised the impartiality and independence of the jury with her dress. Recently, even the right of elected deputies to express their personal religious affiliation in local parliaments has been questioned.

Since 2009 (not visible in figure 2), the debate has shifted to other types of religious dress, namely the Islamic face veil. One year later, in September 2010, the Parliament adopted a law that bans all kinds of face covers in public spaces, which took effect in April 2011. Veiled women will be consulted by organisations with the aim to convince them to reconsider their choice within six months after their first arrest, and can be fined if they repeatedly ignore warnings of the police to unveil in public. People found guilty of forcing others to cover are penalised with fines up to 30,000 and a year in prison. My analysis of framing of French debates about the face veil will be brief compared to the analysis of policy debates and policies on the pupil’s headscarf, because this issue only became politically contentious in 2009, two years after the end of my research period (1985-2007).

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150 On September 27, 2002 the Paris Administrative Tribunal rejected an appeal from a hijab-wearing health worker who had been fired by a public clinic for the homeless. The judges argued that employees of public services were, bound by the principle of secularism and strict neutrality, to refrain from expressing their adherence to a religious faith during work.

151 Minister of Justice in: AN No. 32189, JO (May 4, 2004): 3344.

152 This occurred when in the regional elections of 2010 a far left-wing party put a headscarf-wearing woman on the list. The candidate was the 21 year old Ilham Mousaid, running for the New Anti Capitalist Party (‘Nouveau Parti Anticapitaliste’, NPA) in the district of Vaucluse. All political parties, except for the small Christian Democrat party, rejected it. The feminist Association pour Solidarité, and its Arab women’s unit, unsuccessfully tried to appeal to court to render her candidacy illegitimate. The administrative court of Marseille nullified the appeal, finding no prove that fundamental liberties were at stake.
7.2.2 Actors

Figure 3 French actors politicising hijab (1989-2007)

Figure 3 makes clear that the right-wing party RPR and later UMP most frequently politicised the headscarf issue, together with the centre-Right party UDF, particularly during the 12th legislature when a right-wing UMP Government took office. Of the 15 law proposals found in the French debate, nine were initiated by the right-wing Gaullist party Republican Rally (RPR) or its successor UMP, and three by the Liberal Democrat party (UDF) or the centrist Radical Party (Valoisien) (PR). However, the Republican Left also raised the issue various times. Several deputies of mixed parliamentary groups Republic and Liberty (République et Liberté, RL) (1993-1997) and Radicals, Citizens and Greens (Radical, Citoyen et Verts, RCV) which supported Jospin’s Government (1997-2002) asked for restrictive legislation.153

After the turn of the century, some members of the Socialist party (PS) also politicised the hijab from a restrictive position, among them former education minister Jack Lang and former Prime Minister Laurent Fabius, who launched a law proposal to ban

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153 The parliamentary group RL regrouped 23 (independent) members of smaller left-wing, Centrist and right-wing parties, such as the former Socialists Minister Jean-Pierre Chevènement and Georges Sarre who established in 1993 the Citizen’s Movement (‘Mouvement des Citoyens’, MDC, from 2002: ‘Mouvement Républicain et Citoyen’, MRC). They would politicise the headscarf several times. The parliamentary group RCV, regrouped deputies of five leftist and ecological parties, including the left-wing Radical party (‘Parti radical-socialiste’, later ‘Parti Radical de Gauche’, PRG), the Greens (Verts), the Citizen’s movement (MDC), reunited Communists and the Ecologists. The RCV formed an alliance with the Socialist government of Lionel Jospin from 1997-2002, called the Pluralist Left (‘Gauche Plurielle’) or the Pluralist Majority (‘Majorité Plurielle’).
religious symbolism in public schools.\textsuperscript{154} This move of the Left from accommodation to legislation went hand-in-hand with a frame convergence (see below).

Remarkably, the Front National has never politicised the headscarf. The fact that the FN only managed to get one parliamentary seat in 1988-1993 and one seat in 1997-2002 partly explains its lack of intervention in the debate. Instead of discussing the incorporation of Muslim girls with or without headscarves in schools, le Pen insisted upon the expulsion of all immigrants from France. Jean-Marie Le Pen therefore opposed the Government’s law of 2004 allowing ‘discrete’ religious symbols, such as the bandana.

\subsection*{7.2.3 Policy responses and jurisprudence}

<table>
<thead>
<tr>
<th>Time</th>
<th>Government</th>
<th>Policy response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989</td>
<td>Socialist/Liberal (PS-UDF). Prime-Minister Michel Rocard (PS). Minister of Education Lionel Jospin (PS), President Francois Mitterand (PS)</td>
<td>Directive that alludes to case to case approach (accommodation): pupil can only be expelled if conduct contains prove of proselytism or of disturb of educational peace</td>
</tr>
<tr>
<td>2004</td>
<td>Right-wing (UMP). Prime-Minister Jean-Pierre Raffarin (UMP); Minister of Education Luc Ferry (independent); President Jacques Chirac (RPR/UMP)</td>
<td>Law that bans all 'ostensible' signs of religious affiliation in primary and secondary state schools.</td>
</tr>
<tr>
<td>2010</td>
<td>Right-wing (UMP). Prime-Minister Francois Fillon (UMP); Minister of Justice Michèle Alliot-Marie; President Nicolas Sarkozy (UMP)</td>
<td>Law that prohibits the wearing of all types of face covers in public space.</td>
</tr>
</tbody>
</table>

Table 5 summarises the policy responses of the French government over time. As widely reported elsewhere, the debate started in 1989 when three pupils in the Northern town of Creil were expelled from school because of their headscarves (Bowen, 2007a; Kastoryano, 2006; Moruzzi, 1994; Rocheford, 2002; Scott, 2007).\textsuperscript{155} The principal of the school was

\textsuperscript{154} AN No. 1227, Proposition de Loi (November 18, 2003).

\textsuperscript{155} The three girls were two sisters of Moroccan background and one daughter of Tunisian parents, who were expelled for the reason that their headscarves infringed upon the neutrality of the school. The school in Creil, an industrial city North of Paris, was a public middle school for pupils aged from 11 to 15 in one of poor housing projects of France (‘cité’). At the time of the affair, the school consisted of 55 \% ethnic minority pupils with 26 different backgrounds (Rochefort, 2001). Initially, a compromise was found in that the girls could wear their headscarves in the school yard, while

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Ernest Chénière, who later entered national Parliament in 1993 as a deputy for the RPR. On 25th October, three weeks after the girls had been expelled and the local affair had become a national debate, the Socialist Minister of Education, Lionel Jospin, responded to the issue in Parliament.156 On 27th November 1989, the State Council advised the Government that the wearing of headscarves conveys a right to freedom of religion of pupils, as it comprises the expression and demonstration of religious beliefs. It argued that religious signs by themselves could not be presumed to perturb schoolchildren. Any discrimination on the basis of religious belief was considered unconstitutional. In line with the state’s duty of neutrality, the State Council was not prepared to interpret questions of religious doctrine, for example assessing whether the hijab represented the oppression and subordination of women in Islam.

Hence, pupils had a right to express and manifest their religious beliefs within state schools. Only if their actions or attitudes could be deemed as proselytism or propaganda could the wearing of headscarves be interpreted as ostentatious and impermissible. In its verdict, the Court made reference to both national laws and several international treaties that France ratified, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and the Convention against Discrimination in Education157 (McGoldrick, 2006: 68-70). Several members of the RPR, UDF and the Communist Party challenged the opinion of the Council and asked for legislation, but to no avail: the Socialist Government chose for accommodation and decentralisation. It issued a Directive to schools encouraging them to take a case to case approach to decide whether pupils transgressed their freedom rights, and to discuss the issue before expelling pupils.158

The debate flared up again in 1993, when the right-wing coalition Government of the Gaullist and Liberal parties RPR and UDF took office. Chénière, who had now become a deputy for the RPR, drew attention to some local conflicts where several girls had demonstrated or gone on hunger strike after they were expelled for refusing to uncover.159,160 He submitted several law proposals to ban ‘ostentatious’ symbols of religion removing them in the class room. But ten days later, on 19th October, they broke the agreement and again started wearing headscarves in schools. At that time, the local affair had become a national debate. On 22nd October two Islamic organisations demonstrated in Paris to oppose their exclusion. One month later, the King of Morocco Hassan II eventually convinced the two Moroccan-French girls to accept the school’s compromise, returning to school in December. The third girl refused and was never re-admitted (Bowen, 2007a: 84).

AN No. 410, Question au Gouvernement (October 25, 1989).  
158 AN No. 15577, Circulaire, JO (15 November 1989).  
159 On 15 November 1993, four girls of Turkish and Moroccan background were expelled when they refused to remove their headscarves during physical education activities in a school in Nantua, a town northeast of Lyon. The father of two girls brought the case to court and sent a letter to the Minister of Education François Bayrou to request their return to school. He also demonstrated with Muslim organisations in front of the school, arguing that it was an obligation for women to cover themselves in Islam (Giugni & Passy, 2000). In 1995, the State Council upheld the expulsion of the two girls, arguing they had disturbed public order: No. 159.981 (March 10, 1995). One of the Turkish imams that supported the father of the girls was later arrested for being accused to have affiliated with radical Islamist movements (Deltombe, 2005).  
160 Another case that drew media attention occurred in Grénoble in 1994, where a girl went on hunger-strike after she was expelled from school because she refused to remove her scarf during gym class that she had decided to wear after a religious trajectory (Bowen, 2007a: 88).
In schools. In addition to the RPR, members of the Republican Left and the UDF also asked for legislation.

On September 20th 1994, the new Minister of Education, Francois Bayrou (UDF) did not favour a law, considering dialogue a better means to ‘convince pupils to adopt an attitude and dress that corresponds to the French tradition’. Nonetheless, he issued a new clothing directive, stating: “the nation is not only a community of citizens with individual rights. She is a community with a destiny. This ideal is first of all constructed at school. Here all children meet and learn to live together and respect each other. […] That is why it is not possible to accept the presence and multiplication of ostentatious signs in a school whose signification involves the separation of certain students from the common life of the school. These signs are in themselves part of proselytisation…” (quoted from McGoldrick (2006): 72).

Bayrou explained in an interview in the magazine Le Point that the headscarf was an ‘ostentatious’ sign, but that kippas or yarmulkes were ‘discrete’ insignia that only signify a private religious attachment (Rigoni, 2004). The effect of this Directive was that it was no longer necessary for schools to prove that pupils’ behaviour was discriminatory and the reason for their expulsion, because headscarves in themselves contained political meanings. This triggered an increase in expulsions.

Hereafter, Minister of Social Affairs (former feminist activist and teacher, and current member of HALDE) Simone Veil (UDF) appointed a new office of ministerial mediator for headscarf cases, headed by the Algeria born Hanifa Chérifi. In case of conflict, she had to convince pupils to respect the rules of the school or to replace ‘ostentatious’ scarves with ‘discrete’ bandanas, a hair-ribbon tightly covered around the hair leaving the neck and ears visible. She was apparently successful, because the number of disputes dropped significantly after 1995 (Bowen, 2007a). Girls with whom no compromises could be found left public school and took private courses, either from school teachers volunteering or (when they attained funding from Muslim associations) from the French Centre for Distance Courses (‘Centre national d’Éducation à Distance’).

In 1997 the State Council ruled, however, that exclusion on the sole grounds of carrying a headscarf is illegal, hence nullifying Bayrou’s Directive. It continued to support a more inclusive interpretation of laïcité, only upholding the expulsion of headscarf-wearing pupils if they had actually proselytised their faith or disturbed public order. This was considered the case when headscarf-wearing pupils publicly protested against their exclusion from school or had refused to partake in (gymnastic) courses bare-headed (Poulter, 1997: 60). Of the 49 cases of suspension or expulsion considered by the State Council between 1994 and 2003, 41 school decisions were reversed (Mc Goldrick, 2006: 70-71). This jurisprudence was upheld by the new left-wing Government that took office in 1997. The Minister of Education Claude Allègre (PS) argued that the Republican school is

161 AN No. 280, Question au Gouvernement (October 20, 1993); AN No. 1515, Proposition de Loi (July 28, 1994); AN No. 3144, Proposition de Loi (November 14, 1996).

162 Among others, Georges Sarre and Jean-Pierre Chévenement of Republic and Liberty, respectively AN No. 696, Question au gouvernement (October 12, 1994) and AN No. 23064, Question Écrit (January 23, 1995). Ladislas Poniatowski and Alain Griotteray of UDF, respectively AN No. 45307, Question Écrit (November 18, 1996) and AN No. 45480, Question Écrit (November 25, 1996).

163 Response of Bayrou in: AN No. 172, Question au Gouvernement, JO (October 6, 1993): 3944.

164 Circulaire Bayrou (September 20, 1994). See also : AN No. 1649 ‘Neutralité de l’enseignement public: port de signes ostentatoires dans les établissements scolaires’, JO (September 20, 1994).
there to welcome rather than to exclude.\textsuperscript{165} His successor Jack Lang, however, would later come out in favour of a law.

In 2003, things started to change when Nicolas Sarkozy (UMP), Minister of Domestic Affairs, announced in a speech at a meeting with the Islamic organisation UOIF on April 19\textsuperscript{th} that all French residents must show their hair on identity card photos, emphasising that the laws of the Republic precede those of religion (Bowen, 2007a: 100; Lorcerie, 2005). This had already been the jurisprudence of the State Council and the policy response of the previous Minister of Interior of the left-wing Cabinet, Jean-Pierre Chevènement in 2000.\textsuperscript{166} Deputies of his party UMP seized the opportunity to launch several law proposals to call for a ban on headscarves in public schools, which were sent to the standing Committee of Social, Cultural and Family affairs for further consideration. On 5\textsuperscript{th} May 2003, it launched a round-table (called ‘Education and Laïcité today’), inviting teachers and pupils of high schools in deprived areas, as well as scholars, ministry representatives, public intellectuals and journalists. One of the issues discussed was religious dress in school. A few highly mediatised conflicts in 1998,\textsuperscript{167} 2002,\textsuperscript{168} and September 2003\textsuperscript{169}, where both teachers and pupils had gone on strike to either oppose or advocate the inclusion of headscarf-wearing girls, illustrated that the conflict had hardened on both sides. Existing methods of negotiation and toleration appeared outdated when girls

\textsuperscript{165} AN No. 371, Question au gouvernement, JO (April 19, 1998): 4269.

\textsuperscript{166} The State Council had opined that for reasons of public order and to prevent falsification people could not wear headscarves on identity pictures: Conseil d’État No. 216903 (July 27, 2001). See also: AN No. 41838, Question au Gouvernement, JO (February 21, 2000), and AN No. 19001, JO (August 11, 2003).

\textsuperscript{167} In 1998, two pupils aged twelve and thirteen year were excluded from normal classes from a secondary school in Gard, Southern France. They had converted to Islam and started to wear headscarves. When they refused to uncover, the school secluded them in a separate classroom without supervision. When they were permitted to return to class, the teachers of the school, backed by many parents of Turkish and North-African origin and the imam of the local mosque, went on strike in December 1999 (Bowen, 2007a).

\textsuperscript{168} In December 2002, a teacher of a high school in Lyon refused to accept a pupil in her class who wore a bandana. When she refused to remove it, the pupil was suspended from school and only accepted back after a phone call of the district superintendent to the principle of the school, Jean-Claude Santana. When her cousin then also started to cover her hair, several teachers of the schools went on strike in February the next year. When the district superintendent urged the teachers to meet him and the rector of the local mosque, they refused and went on strike again in March, 2003. After consultation with Hanifa Chérifi and the district superintendent, the school was willing to allow the pupil back in classroom with a bandana (Bowen, 2007a). Santana was heard by both the Commission Stasi and Debré and invited to the round table about secularism in the Republican school on 22 May 2003.

\textsuperscript{169} In September 2003, at the peak of the headscarf discussions prior to the law, two Muslim sisters of sixteen and eighteen years old, Alma and Lila Lévy, were expelled from a school in Aubervilliers, a North-eastern suburb of Paris. They were the daughters of a self-proclaimed Jewish atheist father and a Muslim mother from the Kabyle region who had never worn a hijab. When they refused to change their headscarves for the bandana and remove headscarves during gymnastic courses, the school principle decided to expel the girls. Their fellow pupils went demonstrating to demand their return (Bowen, 2007a: 111). The case drew particularly strong media attention because the girls had chosen to cover against the wish of their parents, which disrupted the general image that they were forced to do so and convinced many that the headscarf was a symbol of religious fundamentalism re-entering school (Giraud & Sintomer, 2004).
increasingly insisted upon their own individual choice and religious freedom to cover (Lorcerie, 2008; Bowen, 2007a).

On 4th June 2003, the Parliament installed an inquiry committee to study the issue, the Mission of Information about the Questions of Religious Symbols at School (‘Mission d’Information sur la Question des Signes Religieux à l’École’), also called Debré Commission after its chair, the President of the Assembly Jean-Louis Debré. Inquiry Commissions may be established by Parliamentary Committees (in this case: for Culture, Family and Social Affairs) to gather more information. The members of such commissions, no more than 30 and proportionally representing the parliamentary groups, gather for a period of six months in which they question (non-) governmental witnesses or experts on the issue, before they launch a report to advise the Government.

Also the Government took action. Within the Ministry of Education, a working group was established to study the issue of religious symbolism in schools, headed by university professor and school inspector Jean-Pierre Obin. In its report published in June 2004 it stated that a revival of laïcité in state schools was needed. On 3rd July 2003, President Jacques Chirac installed the (initially: Independent) Commission of Reflection on the Application of the Principle of Laïcité in the Republic’ (‘Commission de réflexion sur l’application du principe de laïcité dans la République’) to study the status of secularism in present-day France. It was headed by Bernard Stasi, a former centre-Right Minister and the State Ombudsman from 2002 until 2007. It consisted of 19 non-governmental members, ranging from academics, intellectuals, administrators, to a few working for integration organisations or in business life. They held four months of public and private hearings with a wide range of teachers and school principals, politicians, academics, grass-root activists, religious representatives, and students. On 11th December 2003, the Stasi Commission published its report in which it recommended a law banning all signs that ‘ostensibly’ manifest (‘clearly display’, or ‘draw attention to’) one’s religious affiliation in public schools (Bowen, 2007a: 140). Even though most members had initially not favoured legislation, eventually only one member abstained from voting, the sociologist of religion Jean Bauberot (Bauberot, 2006). One week previously, the Debré commission’s report had been launched, advising a full ban on all ‘visible’ religious symbols in public schools. On 17th December 2003, Chirac gave a public speech in the Senate announcing his plan to implement a ban.

The Government’s law project was prepared by the Committee of Laws and deliberated with the fraction leaders of each parliamentary group and a member of the State Council, before being plenary discussed from 3rd to 7th February 2004. A majority of 494 to 36 voted in favour of the law, with 31 abstentions. Two amendments were added: mediation between the school and pupil was obligatory before the latter could be expelled and every year there must be a review of the legislation and its implementation in practice.

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173 AN No. 1378, Projet de Loi relatif à l’application du principe de laïcité dans les écoles, collèges et lycées publics (January 28, 2004).
(McGoldrick, 2006; Idriss, 2005). In addition to the 330 of 364 UMP members, also 140 of 149 members of the Socialist party voted in favour of the law. The 30 members of the Liberal Democrat party UDF were more divided about the law: 13 members insisted that a law must uphold the principle of secularism to avoid religious conflicts and communal tensions, 12 members abstained from voting, and 4 members voted against the law because it wrongly interpreted the principle of laïcité as a ‘weapon’ rather than as a marker of tolerance and respect of others. The strongest objection came from the parliamentary group Communs and Republicans, with two thirds of its 21 members voting against the law. They argued that instead of tackling the root causes of identity politics by combating poverty, the law would only stigmatise Muslim youngsters and contribute to racism, identity politics and fundamentalism.\footnote{AN, Explanations of vote (10 February 2004).}

On March 3, a vote was passed in the Senate with 276 in favour and 20 against.\footnote{Senators Alain Madelin (UMP) and Martine Aubry (PS) voted against the law.} Two weeks later, the Ministry of Education issued a new Directive explaining that all conspicuous religious symbols were forbidden in public schools, which were those that stand out and immediately denote religious affiliation: yarmulkes, headscarves, turbans, large Christian crosses; necklaces with small crosses, a David Star or the hands of Fatima (a pre-Islamic, cultural symbol) were explicitly allowed. Hence, the state made a distinction between non-acceptable religious and acceptable cultural practices. This led to some confusion about the rights of Sikh minorities to wear turbans. It became clear in a court case of March 2005 that turbans were also forbidden, although in some French schools the keski is allowed (the hairnet Sikhs wear underneath their turban) (McGoldrick, 2006; Rigioni, 2004).

\subsection*{7.3 Diagnoses and prognoses in the parliamentary debates on pupils’ headscarves}

In this section I will discuss which problems were defined in the debates on the pupils’ headscarf, and which solutions were suggested. Three dominant problems discussed were: first, the wearing of headscarves conflicted with the separation between church and states, and endangered third persons’ freedom of belief. Deputies particularly disagreed over the prognosis whether a ban on religious dress was in line with constitutional liberties of religious freedom. This problem continued to dominate the agenda from 1989 until 2003. Second, headscarves indicated segregationism and a manifestation of group differences that conflicted with Republican citizenship values of individual equality, liberty and solidarity, undermining national unity. This problem was already prominent on the agenda from the onset. But the causal logic changed over time; while the inclusion of girls in the Republican schools was initially considered a means of assimilating immigrants into individual French citizens, over time they had to be assimilated before entering school. Third was the problem that the headscarf symbolised women’s oppression in Islam, and conflicted with principles of gender equality. While it was already on the agenda in 1989, it only resonated after the turn of the century, when a majority of deputies considered a ban necessary to lift girls from communal pressure to cover. A fourth frame that intertwined with all three diagnoses argued that the headscarf was a symbol or tool of a politicised Islam.
1. State-church frames

Various members of the RPR challenged the Socialist government’s initial tolerant stance towards headscarves, using a conflict with neutrality and an Islamic fundamentalism frame. In 1989, Alain Juppé of the RPR argued that the headscarf symbolized a religious fundamentalism of Muslims rejecting the secular foundations of the Republic.\(^{176}\) Using the word ‘intégrisme’, Juppé drew a parallel between headscarf-wearing pupils and Catholic believers of the early 20th century, who had rejected secular modernity by living according to the fundamentals of their religion in their public life (Bowen, 2007a: 156). Like Catholics, who had defended an ‘integral’ Christianity, Muslims would now intrude upon public schools to propagate anti-modernist and anti-Republican ideas. According to the RPR, the refusal to remove headscarves in public schools could in itself be interpreted as an unwillingness to accept the secular laws of the Republic, and as an attempt of religious fundamentalist groups to impose their religious truth-claims on others.\(^{177}\) RPR members together with some deputies of the PC viewed the Directive that allowed for some negotiation with headscarf-wearing pupils as dangerously compromising laïcité.\(^{178}\) Headscarf-wearing girls, still identified as ‘immigrant’ girls, needed to be protected from the claims of religious fundamentalists and, instead, be exposed to laïcité, that is: a strict secularism that relegates religious expressions out of the public sphere.\(^{179}\)

The Socialist Government shared the diagnosis that the headscarf conflicted with laïcité. The Socialist Minister of Education, Jospin, argued that, “religion, is in our society a private affair,” and that therefore, “I ask pupils and parents to respect these (laïc) principles of the public school, and not to come to school with any symbol that affirms a difference or religious distinction.” Yet, he also argued that “there does not exist a laïcité a la carte,” and that France was a constitutional state that safeguarded pupils’ religious freedom rights.\(^{180}\) Also the Minister of social housing and social welfare, Claude Evin (PS), framed the inclusion of hijab-wearing girls in school as a matter of extending universal rights of education to migrants.\(^{181}\)

Here we see that in the debate about headscarves the conflict between moderate secularists and hardliners is being played out. Even though the Socialist Government recognized the dilemma of religious proselytism and normatively favoured the privatization of religion in public schools, it was in favour of a moderate secularism to foster the emancipation and integration of migrants’ children. The PS Government reasoned Muslim pupils would secularize gradually according to French modernity if only the state would integrate them socially and culturally. According to then-Prime Minister Michel Rocard in 1989, the headscarf should be regarded more as a ‘symbol of alienation’ rather than of religion.\(^{182}\) If only the Republic would further include migrants and tackle social-economic marginalisation, he seemed to suggest, the need to wear headscarves and retain religious and cultural identities would naturally reduce. He explained why he opposed a law: “I don’t believe a pure authoritarian procedure to be very effective, and

\(^{176}\) AN No. 410, Question au Gouvernment, JO (October 25, 1989).
\(^{177}\) AN No. 19612, Question écrit (October 30, 1989).
\(^{178}\) AN No. 471, Question au Gouvernment, JO (November 29, 1989).
\(^{179}\) AN No. 473, Question au Gouvernment, JO (November 30, 1989).
\(^{180}\) AN No. 471, Question au Gouvernment, JO (November 29, 1989): 5696.
\(^{181}\) AN No. 426, Question au Gouvernement, JO (November 9, 1989) : 4751-2.
\(^{182}\) AN No. 426, Question au Gouvernement, JO (Novembre 8, 1989) : 4753.
Despite the militant lay-man I am, I don’t accept repression to be the dominant face of laïcité. Laïcité wants to convince, to persuade and to be shining. That is the laïcité that should be maintained in our schools [...] The aim of our public and lay school is to welcome, to persuade, to integrate, that means, to realise the goals of education in another way than through a politics of a priori exclusion.”

Both the established Right and some members of the Left continued to challenge this tolerant stance. During the mid 1990s, Ernest Chénière of the RPR launched several law projects calling for a ban. He framed such pupil behaviour in public schools as ‘processes of jihad’, and argued that the ‘inconsiderate, perverse and irresponsible’ Directive of Jospin should be replaced with a law to bolster the Islamist threat. Also members of the Republican Left argued that schools were in need of state support to deal with ‘intégrists’ in public school, who abused religious freedom rights to push their religion into the public sphere. Headscarves were referred to as ‘chadors’ and parallels were drawn with Islamist theocracies abroad. This framing of the headscarf in terms of an Islamic fundamentalism encroaching upon the Republic occurred during a period when the new Minister of Interior Charles Pasqua (RPR) of the RPR-UDF government (1993-1997) had arrested several Muslim militants who transposed the Algerian War to French soil by killing several French tourists in Algeria, and French civilians in bomb attacks in Paris (Deltombe, 2005). The idea that France was at ‘war’ and facing Islamic ‘aggression’ was also communicated in a debate tabled by the Government, in which Pasqua directly linked the hijab to the problem of Islamic fundamentalism. Deputies seized this opportunity by calling for the institutionalization of a combative secularism, but were only successful after the turn of the century when a law was passed that prohibited the wearing of conspicuous religious signs.

Part of the reason is that in 2003, the Socialist Party had also changed position in favour of a strict secularism. In order to support both teachers and secular parents who wanted their children to be free from religious manipulation in the public school, several Socialist deputies called upon the Government to issue a ‘Charter of Laïcité’ and a guide of citizenship (‘de la citoyenneté’), as well as a law on all visible religious symbols. The PS

183 AN No. 424, Question au Gouvernement, JO (November 9, 1989): 4751-2
185 AN No. 280, Question au Gouvernement, JO (20 Octobre 1993): 4565-7.
186 E.g. MP Georges Sarre (RL) in: AN No. 696, Question au Gouvernement, JO (October 12, 1994): 5311.
187 E.g. by MP Maurice Leroy (UDF): AN No. 371, Question sans Débat, JO (May 19, 1998): 4028.
188 In May 1995, Sheikh Sahraoui was killed in Paris, a historical figure of the Algerian Islamist Front movement (‘Front Islamique du Salut, FIS) and a symbol of a moderate Islamism. Hereafter, several bomb attacks occurred in Paris from July until October. In total 200 people were injured and 10 died. All attacks would be revendicated by the Islamic Army group “Groupe Islamique Armée, GIA) that had also been involved in the hijacking of an airplaine of Air France in 1994 (Deltombe, 2005). The government launched several operations to arrest those and other Islamist extremists that were suspected of being involved in the killing of five French tourists in Alger (Algeria) in 1994, many of whom later would be declared not guilty of any terrorist act.
190 AN No. 1227, Project de Loi, JO (November 18, 2003).
had initially struggled with the precise wording of the Government’s law proposal that
differentiated between good (‘discrete’) and bad (‘ostensible’) religious expressions. The
Socialists considered it undesirable that the state defined the signs that minorities were
allowed to wear in public, and should instead ban all visible religious expressions, in line
with the advice of the Debré commission. Jean-Marc Ayrault, the fraction leader of the
Socialist Party, argued why he initially opposed the Government’s proposal: “willingly or
unwillingly, you have contributed to the feeling that the ban particularly targets Muslims.
A serious error! There where you should have eschewed any differentiation, you have
created a hierarchy between good and bad signs. There where you should have stand up for
equality and justice, you have accentuated exclusion. There where you should have
provided clarity, you have spread trouble.”

But the chair of the Commission of Laws, Pascal Clément (UMP), explained that
the proposal of the PS to ban all religious signs in public schools would not pass the
approval of the European Court of Human rights. The Court only allows for restrictions on
the right to religious freedom ‘in the interest of public safety, for the protection of public
order, health or morals, or for the protection of the rights and freedoms of others (Loenen,
2009). Eventually, an overwhelming majority of Socialist deputies voted in favour of the
law project of the government that had been advised by the members of the Stasi
Commission, who had initially also disagreed whether a ban was in line with French
secularism. The famous scholar of secularism Henry Pena-Ruiz had defended a combative
interpretation of secularism, whereas another well-known scholar of secularism Jean
Bauberot prioritized a more moderate reading of French secularism, allowing for the
wearing of headscarves (Bauberot, 2005). The final report illustrates a middle ground by,
on the one hand, advocating a strict secularism in schools that required the removal of
conspicuous religious symbols and, on the other hand, recommending the introduction of a
Muslim and Jewish holiday in the French - predominantly Catholic – calendar, or the
creation of Muslim chaplaincies in hospitals and prisons, or the offering of Halal food in
public schools. Only the former recommendation of a ban was followed up by the
Government.

By banning only conspicuous religious symbols, the French Government found a way
to balance international protected religious freedom rights with general interest of public
order. Moreover, the French used the ‘margin of appreciation’ that the European Court of
Human Rights grants to nation-states to interpret religious freedom rights, by emphasising
laïcité as a particular national tradition of safeguarding national unity according to a
Republican pact (Thomas 2006: 255). Contrasting with post-national theories, the EU did
thus not provide institutional opportunities for migrant citizens to claim expansive human
rights. It rather functioned as an opportunity for established nation-state actors to pass
restrictive legislation that reifies, or better, expands national state-church traditions
(Koenig, 2007).

2. Social cohesion & public order frames
In 1993, a segregation frame also appeared in the debate about the headscarf, discussing it
as a symbol of communalism (‘communautarisme’ or ‘repli communautaire’) and

191 AN, plenary debate, (February 3, 2004).
192 Bernard Stasi, Rapport au Président de la République sur l’application du principe de laïcité
indicating the formation of cultural or religious groups that isolate themselves from, and turn against, mainstream society (Delmas, 2006: 60). It was argued that wearing the headscarf indicates an unwillingness to integrate by prioritising one’s groups’ norms over the shared norms and values of the Republic. The causal logic is that the accommodation of such symbols of segregation and identity politics introduces differences that, on the one hand, contribute to the fragmentation of French society in separate communities fighting and discriminating each other, and, on the other hand, jeopardise the individual rights of ‘minorities within minorities’, such as Muslim women (Eisenberg & Spinner-Halev, 2005).

When a Liberal Gaullist Government took office in 1993, deputies seized the opportunity to call for legislation on the hijab. When the State Council nullified this Government’s new directive that had allowed schools to expel pupils who wore ‘ostentatious’ religious symbols, proponents of a legislation argued that if the state did not implement a law, it abandoned Muslims (as hijab-wearing pupils were now framed) who did not want to conform to group norms, but rather become ‘French’. “Recognising the headscarf in the heart of the secular school,” argued Maurice Leroy of the UDF in 1998, “is proof of a disrespect for the majority of Muslims who do want to integrate in French society. What kind of legislative measures or regulative orders are you planning to undertake so that the state fulfils its duty of protection of those who would like to leave or take distance from his own community, who would like to become a citizen only, in short: simply change?”

Around the turn of the century, the diagnosis that the headscarf expressed communalism was linked to other problems, such as anti-Semitic acts, pupils refusing to partake in courses on the Enlightenment or the Shoah, or in physical or biology courses. Jean-Claude Guibal (UMP), for instance, raised questions about a conflict at a university where Islamic students had objected to a non-Muslim teacher reciting the Quran during theology courses. In January 2003, the new Minister of Education Luc Ferry (UMP) responded to such incidents by launching an action-plan, including the distribution of a ‘Republican booklet’ to educate pupils about Republican values and principles, notably laïcité, and a guide to support public school teachers facing concrete cases of ‘communal drifts and racism or anti-Semitism’ in school.

Also the recommendation of the Stasi committee to implement a ban on conspicuous religious dress had been motivated by the idea that the headscarf was not merely an expression of personal religious belonging but (also) of a politicised Islamic group identity that endangered the social pact. After six months of hearings, the majority of the commission members had reached the conclusion that the headscarf was no longer exclusively a question of religious freedom, but also of public order. The members were particularly moved by testimonies of school directors reporting about pupils being ‘ lynched ’ for wearing the kippah. Different from the ‘old’ extreme right-wing anti-Semitism, this kind of anti-Semitism was seen as the result of the politicisation of Muslim identities among marginalised Magrebian youth living in ethnically and socially

193 AN No. 371, Question sans Débat, JO (May 19, 1998).
195 No. 21549, JO (June 7, 2003).
196 Luc Ferry, Contre les dérives communautaristes: réaffirmer les principes de la laïcité républicaine, Press statement (February 27, 2003).
197 Idem: 15; 57.
homogeneous suburb. Their disenfranchisement would explain why they increasingly identified with a global community of believers rather than French national identity, and translate their sympathy with Palestinian Muslims abroad in anti-Semitism at home (rather than that the external conflict fuelled internal identity politics, see Thomas, 2006). A visit to the Netherlands, where commission members spoke to the Dutch philosopher Herman Philipse who is known for his admiration of French Republicanism, convinced several commission members that policies of multiculturalism caused a situation of segregation (‘tribalism’), which had fed communal conflicts, religious extremism and anti-Semitism. Even Stasi Commission member Alain Touraine, who had initially been in favour of tolerating headscarves, now also supported a ban, arguing that “since the intifada, France has become a communitarian country. […] It is not fair to say that I have changed my mind. It is France that has profoundly changed: in the high schools, one is Jewish or one is Arab. One no longer identifies with social class […] but by religion” (quoted from Thomas, 2006: 253).

According to the Commission, recognising differences was not wrong per se. It differentiated between, on the one hand, community formation (‘le fait communautaire’) and belonging (‘apparténance’) and, on the other hand, communalism (‘le communautarisme’). It thus advised the President to recognise the diversity of contemporary French society by serving Halal food in public canteens, considering teaching Arab in public schools, and addressing colonialism and religious pluralism in the school curricula. But it simultaneously advised a ban on ‘conspicuous’ religious symbols in public schools. According to the Commission members, the 1989 State Council ruling, which had only discussed the issue in terms of religious freedom rights and state neutrality, was outdated. Non-specific ‘political religious’ groups were testing the Republic and used the headscarf as an instrument to spread their communitarian project in public schools. Teachers were seen as in need of clear rules and tools to bolster the ‘guerrilla against laïcité’. A restriction of a pupil’s individual freedom of religion was considered legitimate for these aims of protecting public order. The headscarf was thus not seen as a legitimate expression of religious belonging, but an illegitimate expression of dangerous communalism at odds with French individual Republicanism, and threatening the unity of the nation (Janssen, 2006a: 277).

When President Jacques Chirac (RPR) announced the law project in December 2003, he emphasised the need to fight “against xenophobia, racism, and, in particular, anti-Semitism”, arguing that “communalism should not be the choice for France.” And

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202 Idem: 46.
203 Idem: 13, 15.
204 Idem: 43-44; 57.
205 Idem: 20, 21; 59
according to Prime-Minister Jean-Pierre Raffarin (UMP), who introduced the law project to Parliament in February 2004, the law marked “a fundamental stage in the political project of ‘living together’ that serves national cohesion” […] Its ambition is to respond to those who would like to put their communitarian membership above the laws of the Republic.” 207 Individual citizens were thus expected to set limits on the affirmation of particular identities when acting as French citizens in the public sphere. If girls refused to do so by insisting upon their religious rights to cover, they were blamed for not ‘integrating’ sufficiently, endangering the social pact. At the same time, they were seen as victims of this communalism, with the headscarf being perceived as imposed upon them. For instance, in a law proposal of 2003, some Socialist deputies framed the donning of headscarves as a ‘contestation of French values and culture’, and ‘a rejection, often imposed on young girls, of the Republican and laic model of integration’. 208

The only substantial opposition to this prognosis of a ban for social cohesion and public order came from members of the Communist Party and independent deputies of the far Left. Two thirds of all Communist MPs rejected the Government’s law project, because it would create a ‘boomerang’ effect by feeding racism, identity politics and fundamentalism among marginalised migrants in the suburbs. Also the High Council of Integration (HCI) had opposed a law in an annual report of 2000, not because it considered the law in itself to be discriminatory but because it would deprive young girls of their chances to integrate by relegating them to their poor suburbs and to private Islamic schools. 209 Instead of challenging the diagnosis that the headscarf symbolised Islamic identity politics, the PCF and HCI reframed the problem in terms of class inequalities. MP Martine Billard of the Green Party, who would abstain from voting as she perceived the headscarf to be a discrimination against women, also argued that the segregation and social-economic marginalisation of immigrants in poor suburbs was the real obstacle for integration. She criticised the so-called ethnicity different-blindness of the Republic by pointing at the Government’s categorisation of migrant children as Muslims, arguing that this denied the differences among them and only perpetuated the mobilisation of collective religious identities. 210 In other words, she criticised the culturalisation of anti-Semitism and segregation as a Muslim problem and pled, in vain, in favour of tackling intersection ethnic and class inequalities to foster social integration.

3. Gender and women’s emancipation frames
The final diagnosis was that the headscarf symbolised women’s inequality to men and their oppression in Islam or in Muslim communities. In this frame, headscarf-wearing girls are represented as victims of sexist familial and community pressure to cover. Initially, this was only a minor frame. The State Council had, for instance, not made any reference to sexual equality in its 1989 advice to the Government. Moreover, initially this diagnosis did not yet result in the prognosis of a ban, even though several deputies had in 1989 already...

207 AN, plenary debate (February 3, 2004).
208 AN No. 1227, Proposition de Loi, JO (November 18, 2003). See also a law proposal of some Leftist deputies of the parliamentary group Radical, Citoyen et Vert: AN No. 2096, Proposition de loi, JO (January 19, 2000).
209 Haut Conseil d’Intégration, Islam dans la République (‘Islam in the Republic’) (November 2000): 50-51. Hereafter, one of its members who had favored a ban, Michèle Tribalat of the National Demography Institute (INED), left the commission over the issue of the headscarf.
210 AN, plenary debate (February 3, 2004).
tabled the headscarf as a symbol of women’s oppression in Islam. The then State Secretary charged with women’s emancipation, Michèle André (PS), had also favoured a ban on gender unequal symbols in public schools. But she could not convince her colleagues to implement a ban on headscarves. Educational Minister Lionel Jospin argued: “Me as well, I don’t agree with the (submissive) image of the woman either, I am pro-mixité, I am pro-emancipation of the woman.” But he considered a ban counter-productive by excluding those Muslim girls that would benefit most from public school education. Prime Minister Michel Rocard likewise argued that Muslim girls’ emancipation would come naturally once Islam would modernise and secularise, drawing a parallel with Christian and Jewish communities that had historically ‘also’ practiced polygamy and full-body covering but had now become gender-equal. State Secretary André eventually agreed with her colleagues that exclusion from school was worse for the emancipation of Muslim girls: “I repeat that the public school permits numerous girls to become free and autonomous women. It should continue this mission for all that live on our soil and that, regardless their origins, must integrate in our French society.” In other words, integration into an ostensibly egalitarian French culture, with the Republican school as the core institution of emancipation, was the solution suggested to unequal gender relations in migrant communities.

After the turn of the century, the gender oppression frame gained ground and the prognosis changed. In its report, the Stasi commission came to the conclusion that a ‘great silent majority’ of young girls of immigrant origin needed protection against Islamists groups forcing them to cover. Referring to practices like genital mutilation, polygamy and forced marriages, the report wrote that: “the basic rights of women in our country are scorned nowadays on a daily basis. Such situation is unacceptable”. The influence of the new feminist movement ‘Neither Whores, Nor Submissive’ (see below) on the debate is evident, as the report literally copies Fadela Amara’s testimony that many young girls in the banlieus are called ‘whores’ if they don’t cover. Some commission members recognised that a law would not necessarily tackle all problems of gender inequality and actually infringed upon the individual freedom of other girls to express their self-chosen religion. Nonetheless, the commission members felt the pressure to rally behind a ban if they wanted to support women’s rights. In the words of Jean Baubérot, the only one who

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211 She argued the headscarf symbolized women’s submission in Islam. Quranic law was juxtaposed with French law, which, she argued, now protected the equality of men and women after years of feminist struggles. Allowing the headscarf (represented as a chador) thus conflicted with and undermined achieved rights and liberties. According to Moreau, the headscarf was: “a political problem that fundamentally touches upon the position of women, our national identity and even the future of our national community!”. AN No. 424, Question au Gouvernement, JO (November 9, 1998): 4751-2.
212 AN No. 410, Question au Gouvernement, JO (October 25, 1989): 4113-4115
213 AN No. 429, Question au Gouvernement, JO (November 9, 1998): 4756-4757
abstained from voting: “if one wants to be in favour of the equality between men and women, one must come out in favour of a law against the headscarf” (Baubérot, 2006: 10)

In Parliament, both the established Left and Right backed the law in order to support young girls facing pressure to wear headscarves. The headscarf was linked to other claims of sex-specific treatment, such as girls who wanted to be examined by female tutors, who asked permission to bring their partner or father to the examination, or whose parents wanted them to be exempt from gender-mixed gymnastic or swimming courses.\(^218\) Any recognition of such sexual and cultural difference was framed as conflicting with Republic values of equality, as well as with the social mixing of different sexes in public (‘mixité’).\(^219\) Also the State Secretary for Women’s Equality, Nicole Ameline (UMP), insisted during a hearing for the Stasi Commission that the headscarf symbolised discrimination on grounds of sex, and functioned as an obstacle to emancipation. Drawing a parallel with women who removed their burqas once liberated in Afghanistan, the state needed to liberate young girls from religious pressure by spreading secular, Republican values in public schools where pupils became citizens.\(^220\)

The struggle for gender equality subsequently became a struggle for national values, as also illustrated by the speech of French President Jacques Chirac, who stated that, “our combat for Republican values must go hand in hand with struggle of women’s rights and their equality to men. This struggle will determine the France of tomorrow. The degree of civilisation of a society is measured in the first place by the status of women in that society.”\(^221\) Also the Socialist Party took up the discourse that French secularism was a bolster for women’s rights. Ségolène Royal, the future Socialist presidential candidate, now came out in favour of legislation to support teachers in their mission to transmit Republican values, while in 1989 she had still defended the inclusion of girls into schools. Linking the headscarf to sexual violence, Royal summarised her party’s stance in 2007 in an interview in the Daily Libération: “I wage my battle for secularism in the name of all women who are veiled, cut, mutilated, violated” (quoted from Raymond, 2009: 492).

Again, the only substantial opposition against a ban came from some members of the far left-wing group ‘Communists and Republicans’. They did not challenge the dichotomous framing that juxtaposed the headscarf as a symbol of oppression within Islam and the Republican as liberating. Instead, they focused on the old prognosis when they argued that a ban would only drive vulnerable girls into the hands of fundamentalists, because parents would send them to private Islamic schools.\(^222\) Thus they likewise viewed secular public education as a means to emancipate girls, yet emphasized combating poverty and racism as solutions for communalism and group pressure on girls. No deputy drew attention to gender unequal power relations in public schools, or focused on boys as policy targets.

\(^{218}\) Philippe Dubourg (UMP) in: AN No. 26440, Question Écrit, JO (October 13, 2003): 7777; Muriel Marland-Militello (UMP) in: AN. No. 12229, Question Écrit, JO (February 17, 2003): 1166.

\(^{219}\) See also Debré report (2003): 77.

\(^{220}\) Audition to the Commission Stasi (November 14, 2003) of the Minister of Parity, Nicole Ameline.

\(^{221}\) Speech Jacques Chirac of December 17, 2003 to the Senate.

\(^{222}\) François Liberti (Communistes et Républicains) in: AN No. 32768, Question Écrit, JO (February 2, 2004): 794.
7.4 Policy frames and policy responses to the Islamic face cover

In 2009, Parliament began debating the face cover - in French the ‘full veil’ (‘voile intégral’). Policy responses have likewise been restrictive, but boundaries between public and private realms drawn in regard to the pupils’ headscarf were redrawn in regard to Islamic face covers. Moreover, the burqa was not recognised as a religious symbol and hence not discussed in terms of laïcité. Instead of being seen as part of a religious ‘cult’, it was seen as a cultural practice or an expression of a fundamentalist Islam that most moderate French Muslims also rejected. Face covering was primarily framed as a problem of women’s subordination and refusal of (shared) citizenship, and secondarily as a security problem.

The origins of the debate on face veils lay in a decision of the State Council, which declared in June 2008 that a Moroccan-born woman had legitimately been refused French citizenship due to her wearing a burqa. In reality, she was wearing a niqab. The woman was married to a French citizen with whom she had three children, and she spoke French fluently. She had been refused citizenship by state officials (who test in personal interviews whether applicants can prove their alliance to French values and mastery of a certain level of French). When she went to a local court in 2004 to dispute this refusal, the judges confirmed that she did not fulfil the criteria of assimilation stipulated in the French civil code. In 2008 the State Council confirmed these judges decision, arguing that she adhered to ‘a radical religious practice that conflicted with the values of the Republic’, notably the equality of the sexes.\(^{223}\)

Deputies took up the case, and on September 23\(^{rd}\) 2008 MP Jacques Myard (UMP) launched the first law proposal, which called ‘to fight against attacks on women’s dignity from certain religious practices’. It proposed a €15,000 fine and a two months’ imprisonment for anyone concealing his or her face or pressuring others to do so.\(^{224}\) It was not put on the agenda for plenary discussion. One year later, on June 9\(^{th}\) 2009, MP André Gerin of the Communist Party along with 58 members of other political parties requested the installation of a parliamentary inquiry commission to study the possibilities of a law banning public burqa-wearing – seen as a symbol conflicting with French values. The politicians framed face veils as prisons denigrating women who were forced to submit to their husbands and other male family members. Moreover, they still presented the burqa as a threat to laïcité, which figured as a guarantee for national unity.\(^{225}\)

Until then, the wearing of face covers had already been prohibited on identity cards for reasons of identification and could be forbidden in universities for reasons of public

\(^{223}\) Conseil d’Etat. No 286798 (June 27, 2008). The applicant had appealed to the State Council after a lower court had refused her naturalisation in 2004: tribunal administratif de Nantes No. 01-2442 (April 14, 2004), followed by a lower court in 2006: cour administrative d’appel No. 05NT01101 (December 29, 2006).

\(^{224}\) AN No. 1121, Projet de Loi (September 23, 2001).

\(^{225}\) AN. No. 1725, Proposition de Résolution tendant à la création d’une commission d’enquête sur la pratique du port de la burqa ou du niqab sur le territoire national (June 9, 2009). André Gerin of the Communist Party had initially proposed a ‘commission d’enquête’, which can hear people under oath: ‘Proposition du Résolution’ (June 9, 2009). Eventually, a ‘commission d’information’ was chosen that does not possess similar investigative power, with Gerin (PC) as chair and Eric Raoul (UMP) as secretary. It existed of 17 deputies of the UMP, 11 of PS, 2 of the Nouveau Centre, 1 of the Communist Party, 1 of the Greens and 2 of the Parliamentary group Democrat et Republicain.
Moreover, civil servants were forbidden from covering their faces, and the Secularism Law of 2004 also forbade this for pupils of public primary and secondary schools. On September 15\textsuperscript{th} 2008, the High Authority against Discrimination and Equality (HALDE) had confirmed that migrant women could be required to remove face veils during the language course offered by the state during the ‘Welcome and Integration contract’ that immigrants must sign when applying for citizenship. Now the question became whether face veiling should be banned from French territory altogether through legislation.

On 22\textsuperscript{nd} June 2009, President Nicolas Sarkozy concurred with this view, arguing in a speech to the Senate and the Assembly at the Congress of Versailles: “The burqa is not a sign of religion, it is a sign of subservience. It will not be welcome on the territory of the French republic”. One day later, the requested commission of inquiry was established to study the practice of wearing the ‘full veil’ (‘voile intégrale’, including both the burqa and the niqab) and ‘to fight against this affront to individual liberties’. The burqa commission held six months of hearings with more than two hundred people in France’s major cities, ranging from women’s rights associations, mayors, specialists of Islam, sociologists, to NGO’s. Muslim representatives like the controversial Muslim scholar Tariq Ramadan or the members of the French Muslim Council CFCM unanimously agreed that the burqa was undesirable, an affront to women’s rights, and had little to do with the quran. The burqa commission also invited several Republican and leftist feminist umbrella organisations to a round table. All feminist associations objected to the face veil as a sexist symbol that denigrated women and conflicted with French values, situating the problem in the unequal relation between men and women which was related to all religions. They supported a ban and called for gender education in public schools and mosques.

Six months later, on 26\textsuperscript{th} January 2010, the burqa Commission published its report. Rather than opting for a full burqa ban, it suggested a contextual ban on all face covers in

\begin{footnote}
228 HALDE, Délibération n° 2008-193 (September 15, 2008).
229 ‘Déclaration de m. Le Président de la République devant le Parlement réuni en congrès’, Versailles (June 22, 2009): 5.
230 AN. No. 1725 (June 9, 2009).
232 Including the LDF, the MFPF, La Fédération nationale Solidarité femmes, Parole des Femmes and the French branch of the European Lobby for Women’s Rights (‘Coordination Française pour le Lobby Européen des Femmes’ (CFLEF). See Round table, hearing no. 3 (July 15, 2009). In a letter to the Parliament, Anne Zelensky and Annie Sugier of the LDF supported the law proposal of Jacques Myard of 23 September 2008 against the burqa in public space, see: ‘Lettre envoyée par Riposte Laïque aux 577 députés’ (posted on Riposte laïque, 21 October 2008).
\end{footnote}
certain public institutions and in public transportation.\textsuperscript{233} Discontent with this outcome, fraction leader of the UMP, Francois Copé, immediately launched a law proposal to ban all kinds of face covering in France, framing fully-covered persons as a threat to security and public order, and as sexual discrimination.\textsuperscript{234} The issue was also politicised in the French Senate.\textsuperscript{235} Laïcité had clearly moved into the background, partly because of the aim to prohibit the veil in all public spaces, and partly because of the non-religious political and cultural meaning attributed to it. In contrast to the Secularism Law of 2004 that had prohibited the display of religion in the realm of education, hence a public service provided by the state, legislators now wanted to ban burqas in all public places. Since the principle of laïcité regulates the relationship between public authorities and citizens in state institutions, rather than the relationship between individual citizens in public life, it was difficult to frame a ban in terms of secularism (even though no-one had questioned the 2004 law, which extends the principle from providers (teachers) to users (pupils) of public services). But also the fact that the burqa was framed as an extreme practice of a politicised Muslim sect rather than a religious practice, made it difficult to allude to the principle of laïcité that, after all, is a principle to regulate religion (see also Joppke, 2011).

Hereafter, Prime-Minister François Fillon asked the legal advice of the State Council on ‘the largest and most effective possible restriction of the veil’, submitted on 30th March 2010.\textsuperscript{236} The State Council came to the same conclusion as the burqa commission and also opposed a general ban. In its report it argued that fundamental freedom rights (individual freedom, right to privacy, personal freedom, freedom of expression and freedom to manifest one’s beliefs, prohibition of discrimination) made it legally untenable to justify a full ban on the Islamic veil, and even on concealing the face in general. Only in certain domains could concealing one’s face be prohibited for reasons of identification (courts, municipalities, examination rooms) or for reasons of public security, law and order (in certain circumstances). In line with the burqa commission, the State Council rejected laïcité as a legitimate legal principle to pass a full ban on face veils. Encouraged by President Sarkozy who had publicly stated three days before the regional elections of March 2010 that he wanted a burqa ban\textsuperscript{237}, several UMP deputies submitted on 27th April 2010 a non-binding resolution (a new political tool after a constitutional reform in 2008) stating that wearing the burqa is an unacceptable and dangerous practice of radical Muslims, which conflicts with French values and ought be prohibited on the territory of the

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\item[233] AN No. 2262 - Rapport d’information de M. Éric Raoult fait au nom de la mission d’information sur la pratique du port du voile intégral sur le territoire national (January 1, 2010). Socialists members of the Commission abstained from the final vote over the report to protest against this law proposal of the UMP before the launch of the Commision’s report.
\item[234] AN No. 2283, Proposition de loi (February 5, 2010).
\item[235] 54 Senators presented a proposal prohibiting cloths in public space which ‘prevents their recognition and identification’. For reasons of public safety and public order, citizens could be required to be identifiable and recognisable, and would be punished with a one month’s imprisonment if not: Sénat No. 593 (July 27, 2010). One year later, another Senator submitted a law proposal that was framed in terms of public order, fining women who wore face veils for religious reasons while imprisoning masked criminals: Sénat No. 275 (February 9, 2010). See: Ismail (2010).
\end{enumerate}
Republic. It was supported by an overwhelming majority in Parliament, which agreed that face veils symbolised a radical Islamic practice that discriminated against women, and required appropriate means to protect women from violence and pressure (434 against 1). Eight days later, on 19th May 2010, the UMP Government adhered to the call and initiated a law project denying the legal advice of the State Council by forbidding all types of face covering in all public spaces (including the street). Women who don’t adhere to the prohibition will be fined €150 and must follow a citizens’ course; people who force women to cover can be imprisoned and must pay a fine of €30,000 (when an adult forces another adult to cover) to €60,000 (when an adult forces a child to cover). The bill was framed in terms of social cohesion and public order, with the face veil being considered an affront to the French Republican social pact of living together. By seeing without being seen and withdrawing from public life, face veiled women were undermining the social contract that required of citizens to express solidarity or, in more archaic terms, fraternity. In other words, public order was understood here much more broadly then public security (see also Joppke, 2011). Public security in the narrow sense of the word had been rejected by the State Council as a legitimate ground to pass a full burqa ban in public space, since it was not proven that concealment of the face constituted a threat. Also other legal scholars had testified for the burqa Commission that there is no legal ground to oblige citizens to dissimulate their faces always and everywhere.

The bill also argued that it was a practice that, even when chosen voluntarily, conflicted with human dignity, including sex equality and liberty/autonomy. By punishing men found guilty of pressuring women to cover, the cause of the problem was clearly linked to unequal power relations between sexes. Yet, it was recognized that, in contrast to the 2004 debates that had concerned young school children, adult women may have voluntarily chosen to wear face veils. Minister of Immigration, Eric Besson, did not, however, consider it problematic to liberate women from an oppression they had chosen to submit to themselves when he argued that: “public authority is founded on protecting the dignity of the person, if necessary against the person herself” (quoted from Joppke, 2011: 16). The State Council, in contrast, had opined that the principle of human dignity comprised the freedom to choose lifestyles and convictions even if they were hard to square with the principle of sex-equality, provided that they do not harm anybody else and that such choices are no violation of physical integrity.

Despite these legal objections, the legislature once again overruled the judiciary. On 13th June 2010, a majority of 335 in the National Assembly voted in favour of the government’s law project (UMP, Nouveau Centre, and twenty left-wing deputies) against 241 abstentions (majority of Socialist and Communist Party and the Greens) and just 1 rejection from an independent candidate. The Socialists had launched, in vain, their own law proposal, which was formulated in line with the State Council’s advice. It prohibited all forms of concealing one’s face (veils, helmets, masks, hoods) but in public institutions only, allowing for some negotiation in case of access to social services, and in specific

238 AN No. 2455, Proposition de Résolution sur l’attachement au respect des valeurs républicaines face au développement de pratiques radicales qui y portent atteinte (April 27, 2010).
239 AN No. 2520, Projet de loi interdisant la dissimulation du visage dans l’espace public (May 19, 2010).
240 AN No. 524 (May 13, 2004).
241 Information Mission. hearing No. 18, with Eric Besson: 13
cases of public security or public health.\textsuperscript{242} The Minister of Justice, Michèle Alliot-Marie (UMP), congratulated the Assembly, saying that the law confirmed and safeguarded the values of the Republic: liberty of individuals, equality between men and women, and particularly solidarity of a nation of destiny (public order in a broad, immaterial sense of the word).\textsuperscript{243} On 22\textsuperscript{nd} June, the parliamentary Women’s Rights Commission concurred with a gender-impact evaluation of the law project, arguing that the ban was indispensable to foster women’s rights, while calling for additional measures to teach gender equality in public schools.\textsuperscript{244} In its own report on the issue, it framed Islamic face covers as a denial of women’s citizenship, a return to patriarchy and an affront to social cohesion.\textsuperscript{245} In other words, even if women intend to wear burqas, the state still had the duty to emancipate them against their wish, attributing a false consciousness to the veiled women in question.

On 14\textsuperscript{th} September 2010, a majority of 246 to 1 in the Senate voted in favour of the Government’s law project. On October 8\textsuperscript{th} the same year, the Constitutional Council concluded that the law banning all kinds of face covers in public spaces, including public streets, was in line with the national constitution and international jurisprudence, and considered a full ban to be proportional to the aim of public order. Concealing one’s face constituted a problem to public security and undermined the ‘minimal’ conditions of forging a socially cohesive society. Moreover, the Constitutional judges concluded that “women who conceal their faces, voluntarily or not, find themselves in a situation of exclusion and inferiority that is incompatible with the constitutional principles of liberty and equality.” Even if women voluntarily cover, the face veil still conflicted with ‘human dignity’.\textsuperscript{246} It only had to be amended in one regard in order to be in line with the principle of religious freedom, by allowing the wearing of face veils in houses of worship.\textsuperscript{247} In other words, the Constitutional Council brought the issue back to a question of religion.

7.5 Analysis and conclusion

Now, to what extent can general and issue-specific opportunity structures explain the framing and regulation of the hijab in France? Were the expectations raised in chapters 3-6 on grounds of the French political opportunity structure met?

Cleavages

Wearing headscarves in French public schools has been a contentious issue from the onset. It was predominantly discussed in terms of potential conflict between religion and French secularism in the Republican school. Deputies disagreed about the legitimate space for public religious expressions in French secularism. This fits the expectations that the religious cleavage is still salient in France and structures policy debates.

\textsuperscript{242} AN No. 2544, Proposition de loi (May 20, 2010).
\textsuperscript{243} AN plenary debate, ‘Interdiction de la dissimulation du visage dans l’espace public. Explications du vote’ (May 13, 2010).
\textsuperscript{244} AN, No. 24, Délégation aux Droits des femmes et l’égalité des chances entre les hommes et les femmes (June 22, 2010).
\textsuperscript{245} AN No. 2646 Rapport d’information déposé par la délégation de l’Assemblée nationale aux droits des femmes et à l’égalité des chances entre les hommes et les femmes sur le projet de loi interdisant la dissimulation du visage dans l’espace public (n°2520) (June 23, 2010).
\textsuperscript{246} Communiqué de presse - 2010-613 DC.
\textsuperscript{247} No. 2010-613 DC (October 7, 2010).
Over time, the headscarf became increasingly associated with worries about a militant Islam testing the Republic, as well as with ethno-religious separation and identity politics. Even though not discussed as an ethnic minority but as a religious problem, only headscarves – not the dress of Sikh minorities or Christian majorities - were perceived as symbols of politicised communal identities and of failing integration. What it means to be French today and to what extent the state should recognize the ethno-religious diversity of its society was renegotiated in debates on the hijab. In contrast to my expectations, cleavages around nationality and ethnic differences thus also re-appeared in the debate.

The need to preserve public order and societal peace (in schools) was coupled with the idea that girls should be protected against the pressures of their fundamentalist communities. There was little negotiation about this diagnosis: over the whole period and throughout political spectrum, Muslim girls were framed as in need of state-protection to become free and autonomous. Politicians, as well as non-governmental women’s and human rights movements, were divided, however, about the prognosis. When the government announced its plans for a ban to liberate girls from unwanted pressure, gender cleavages flared up that, however, intersected with the religious and nationality/ethnic cleavage and divided the women’s movement (see below). Also in the burqa debate, gender relations were at the heart of a conflict between the French Republic and a (orthodox) Islam. The face veil was presented as the anti-symbol of French values and traditions of gender-equality, hence a symbol of failing integration.

In other words, conflicts over gender flared up again when ‘French’ and ‘Islamic’ gender roles were juxtaposed in a hierarchical way, with Muslim girls and women being able to become ‘French’ if they emancipated from their religious culture into individual, secular subjects. This particular intersection of cleavages around religion, nationality and gender thus turned the issue of female Muslim dress into a particularly contentious issue in France.

State-church patterns

Historical institutional patterns of state-church relations clearly structured the policy process around the hijab. Whether the Government tolerated the pupils’ headscarf or opted for Directives or legislation to expel pupils who wore their headscarves ostentatiously, the aim has always been to convince pupils to remove visible expressions of religious difference in the public school. This policy preference for a strictly secular school can be explained as a path-dependent effect of the institutionalised principle of laïcité as a strict separation between state and church in order to depoliticise religion, particularly in the Republican school.

Furthermore, in line with the Gallican approach of the French state to religion, authorities worked together with Muslim organisations to bring Islam in line with the laws of the Republic. Throughout the 1990s, local authorities had, for instance, involved Islamic organisations in negotiating in local conflicts between pupils refusing to unveil and schools insisting upon neutral classrooms (e.g. in Creil in 1989 and Lyon in 2003) (Bowen, 2007a: 84-87; Giugni & Passy, 2000). Also after the law was implemented, the Government approached members of the moderate CFCM and of the Great Mosque of Paris to attend a mission to Baghdad to free two French hostages who had been hijacked in August 2004 by Muslim extremists who had threatened to kill them if the law was not retracted (Laurence & Vaisse, 2006). Both the President of the CFCM and rector of the Great Mosque of Paris,
Dalil Boubakeur, took a stance in favour of a law. In other words, the state was not indifferent or abstentionist to religion, but actively co-opted loyal French Muslims that accepted the domestication of Islam to the existing secular framework of laïcité.

Nonetheless, institutional trajectories of secularism cannot explain why the pupils’ headscarf was initially tolerated, and only prohibited in 2004. In fact, laïcité formed no legal obstacle for pupils to wear hijabs. The State Council had argued that the right to express one’s religion was constitutionally protected. The duty to religious constraint so far only applied to providers and not users of public facilities. This made it difficult to push for a ban on pupils’ headscarves from the perspective of laïcité, pupils who are, after all, not public authorities. Only when the headscarf was framed as a symbol of a politicised Islam that endangered the individual rights of Muslim girls and Jewish pupils and national unity were curtailments of pupils’ rights to religious freedom seen as legitimate. Therefore the Secularism Law of 2003 illustrates an extension of institutional logics of secularism, by broadening the scope of ‘public’ and limiting the scope of ‘private’. The fact that the burqa debate quickly moved away from the laïcité frame also illustrates that the current legislation is not necessarily a result of a lock-in effect of institutionalized practices of secularism. Actors framed this issue, whether strategically or not, in terms of public security and human dignity rather than in terms of state-church relations, because these would actually make a full ban on religious dress in public space legally untenable.

Citizenship and migrant integration policies
French citizenship and integration policies can explain why any affirmation of ethno-religious group difference was considered dangerous for national unity. Like Jewish minorities in the past, Muslims could become French only if they assimilated to secular Republicanism. They had to subdue their particular ethno-cultural and religious affiliations in favour of their primary identity as French citizens for the sake of national unity. Although the PS had initially considered tolerance of the headscarf better than exclusion, it never questioned the majority-based culture of the society in which migrants needed to be ‘included’. It had also considered the headscarf as a failure of integration but, in line with then dominant policy paradigms of immigrant integration, it linked the problem of ethnic retention to class inequalities and the solution to traditional Republican institutions of integration, notably the public school. After the turn of the century, however, also the PS returned to a Republicanism model of assimilation that emphasised a homogeneous French national identity that demanded of citizens to take a distance from their personal religious affiliations already before they entered the social factory. In the words of Joan Scott (2007: 102-3): “the school now became a miniature version of the nation, conceived as a collection of abstract individuals who were shorn of any identity other than their French citizenship. […] Those who did not conform in advance, who were not already ‘French’, fell outside the purview of the universal because in the body of the nation, commonality was a prerequisite for membership in the educational community.”

This change from a belief that integration would naturally follow from citizenship and social participation (by accommodating the pupil’s headscarf) to a demand of assimilation to become citizen (by banning them beforehand) reflects changes that were observed in French citizenship legislation in Chapter 5. Also in the burqa debate, French authorities made cultural assimilation a prerequisite for citizenship by requiring the removal of face veils in order to be eligible for French nationality. The burqa debate was
largely framed in terms of face veiled women undermining the social pact by visibly demonstrating their difference and separation from society. Even though we have seen how the French antidiscrimination framework has augmented over time due to EU pressure, a ban was hardly framed in terms of racial and ethnic discrimination.

Institutionalised actors in the field of integration and racism were divided about the new Secularism Law but some likewise moved towards a preference for a ban when the headscarf was linked to politicised Islamic group identities, anti-Semitism and the fracturing of the nation in oppositional groups. The anti-discrimination association ‘France Plus’ and ‘Ligue internationale contre le racisme et l'antisémitisme’ (LICRA) had in the 1990s already pleaded in favour of a ban on religious symbols. According to LICRA, the headscarf invited communalism in the public school and hindered children’s recognition of one another as equal peers of the same nation. The satellite organisation of PS, SOS Racism, in contrast, had still opposed the exclusion of the girls in Creil as the ‘Vichy of the integration of immigrants’ (Bowen, 2007a: 85). But during the mid-1990s, SOS Racism also started advocating the prohibition of religious symbols in schools to forge social cohesion across difference. Trade-unions of educational staff, to whom politicians often referred as if they would be in need of legislation to halt identity-politics in school, were divided on the desirability of a law.248

The Communist affiliated MRAP (‘Mouvement contre le Racisme et pour Amnité entre les Peuples’) and the LDH (‘Ligue des Droits de l’Homme’) continued to oppose the exclusion of pupils as negative for integration. In December 2003, the vice-president of the LDH initiated a petition against the law together with six other public figures and a member of the Green party.249 They blamed the Republic, not immigrant children themselves, for failing integration. They argued that the law did not tackle but rather covered the real problems of discrimination and marginalisation that hindered post-colonial migrants’ full membership in the French nation. Together with other antidiscrimination organisations, Muslim (youth) organisations and new feminist initiatives, the LDH and MRAP mobilised against a ban in an association called ‘A school for and of everyone - Against the laws of exclusion’ (‘Collectif Une École pour toutes et tous- Contre les lois d’exclusions’, CEPT) (Lorcerie, 2005; Rigoni, 2004). It launched two petitions to renounce the Secularism Law250 and held large demonstrations in December, January and February in several French cities to oppose the law project, using a secular and universalistic

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248 On 17 December 2003 three of the four major confederations of educational personnel asked Chirac in a letter published in Liberation and Le Monde not to propose a new law, including the largest one FSU (44% of all public school teachers). Also other secularists unions of parents and educational staff had rejected legislation, arguing that the headscarf was not on the top priority list of their concerns. School principles were more in favour of legislative tools that would help them prohibit the wearing of headscarves in schools. The general secretary of the SNPDEN (‘Syndicat national des personnels de direction de l’éducation nationale’), Philippe Guittet, was often in the media to support the law, similar to SNALC, a smaller trade union of teachers on the right side of the political spectrum.

249 ‘Un voile sur les discriminations’ (‘a veil to cover discrimination’), Le Monde (December 9, 2003). It was signed by Christine Delphy, Alima Boudemienne-Thierry, (a Green deputy of the EP), the sociologists Dounia Bouzar Gaspard and Eric Fassin, the historian Madeleine Réberioux, and the vice-president of LDH Nicole Savy.

message of inclusion and emancipation. Muslim girls and women embraced their simultaneous identity as Muslims and French citizens, by releasing blue, white and red balloons, and wearing headscarves emblazoned with the French tricolour (Silverstein, 2004).

Several of these NGO’s had access to policy debates and managed to draw some attention to persistent social-economic marginalisation as obstacles to substantive equality. But they were too divided about the headscarf in public schools to function as influential allies for hijab-wearing pupils. Moreover, new self-associations of second and third generation immigrants that used a more radical discourse had no institutional venues to shape policy debates. One example is the ‘Movement of Indigenous of the Republic’ (‘Mouvement des Indigenes de la Republique’ MIR). By adopting this name, which refers to the secondary status of the indigenous population of French colonies, it argued that the 2003 law was as a new form of post-colonialism, racism and sexism of a Republic which again subjugated migrants to secondary subjects. Like Muslim subjects in the colonial past, post-colonial immigrants could only become French if they gave up certain elements of their religion and civilize (Bouteldja, 2007; Benelli et al., 2006: 4; Delphy, 2006). Even though the MIR found some allies among members of the Communist party PCF, the Revolutionary Communist League LCR, and the Green Party, its anti-statist and radical discourse in terms of ethno-religious differences appeared unsuccessful to effect change. This is in line with the expectations that French integration strategies favour claims framed in terms of individual human rights. The paradox is that while the headscarf was considered to conflict with the indivisible Republican nation existing of individuals only, hence as a refusal of integration, politicians simultaneously constructed this Islamic community by attributing values to the headscarf that marked the intrinsic differences between Islam and the Republic.

Gender machinery and women’s emancipation policies
In line with institutional logics of women’s emancipation and gender equality, which have focused on women’s formal equality, the hijab debate was over the whole period strongly framed in terms of the headscarf conflicting with the equality between men and women. A Republic that does not differentiate between citizens on any grounds, including sex, could not accommodate such symbols. Yet, only after the turn of the century, a consensus emerged that a ban on the headscarf was the right solution to foster gender equality. The focus had shifted from veiled girls in need of emancipation to unveiled girls in need of protection from sexual violence. The perpetrators of the problem had changed from migrant families raising their daughters according to traditional cultures of their homelands to neo-Islamist fundamentalist groups in the French suburbs, which attempted to impose patriarchal Sharia law in the heart of the Republic: the school. This increased the legitimacy of the state to pass a law.

This change in framing can be explained by the influence of new feminist alliances on policy debates. In line with the consolidation of the gender machinery, feminists were increasingly participating in policy debates, albeit only a selected few with close ties to political elites. In 1989, women’s movements had not yet become involved in policy debates, which from the onset of the debate had divided over the issue. Traditional leftist feminist organisations and trade-unions affiliated with the National Council for Women’s Rights (‘Collectif National des Droits des Femmes’, CNDF) had considered the headscarf
to be sexist, and worried about the autonomy and equality of young Muslim girls within patriarchal family and cultural structures. However, most had still defended the inclusion of girls in public schools, in order to enable them to increase their autonomy and emancipation.\(^{251}\) Only some had already pleaded in favour of a ban on sexist symbols in schools, such as the abortion-rights organisation Choisir, the League of Women’s Rights (LDF), the French Mouvement for Family Planning (MFPF) and the Association for Female Journalists (AFJ) (Rochefort, 2002: 153).

After the turn of the century, the new organisation Neither Whores, Nor Submissive (NPNS) played a significant role in gendering the debates about the headscarf. Its close ties with political elites, as well as its framing of the headscarf problem in terms of the government’s discourse that stressed public security in French suburbs, enabled access to decision-making arenas. The Stasi Commission relied upon their and other secular Muslim women’s insights that non-veiled girls in French suburbs were in need of protection from Islamic fundamentalists through a Secularism law (Basel, 2007).\(^{252}\) Although she had initially opposed to it, the chair of NPNS Fadela Amara – who later became a Socialist Junior Minister with the UMP Government – eventually came out in favour of legislation banning headscarves in schools. NPNS signed a petition in Elle magazine in 2003 to encourage Chirac to impose a ban, together with other prominent Republican feminists, among others Elisabeth Badinter (who had already objected to the headscarf in 1989)\(^{253}\), Anne Zelensky (the chair of Women’s League)\(^{254}\), and former Minister of Emancipation Yvette Roudy (who had changed her initial tolerant stance as the conflict evolved). They agitated against Islamic and other forms of religious fundamentalism, discrimination and social degradation of suburbs.\(^{255}\) In contrast to most traditional feminist organisations

\(^{251}\) Such as the feminist scholar and activist Françoise Gaspard, whose ethnographic research convinced her that the headscarf could function as a tool of emancipation and as an identity marker to navigate between a traditional communities and modern society (Gaspard & Khosrokhavar, 1995). Françoise Gaspard publically admitted disliking the headscarf, but argued in an anti-ban petition in May 2003 that: “it is by welcoming her at the secular school that we can help her to free herself and give her the means to her autonomy; it is in sending her away that we condemn her to oppression” (cited from Bowen, 2007a: 107). See also her petition; ‘Oui au Foulard a l’école laïque’ (‘yes to the headscarf in the public school’), *Libération* (May 20, 2003).

\(^{252}\) The French Union of Muslim women (‘Union Francaise des Femmes Musulmanes’, UFFM) had likewise defended a strict secularism in its testimony to the Stasi Commission, as well as the Iranian French feminist Chahdortt Djavann, who replicated the analogy of the hijab and the David star to indicate women’s secondary status in Islam. Djahvann, C. (2003), *Bas les voiles!* (‘off those veils’) (Paris: Éditions Gallimar).

\(^{253}\) In 1989, Elisabeth Badinter had criticized Jospin for his decision not to expel girls with headscarves from public schools. In an article she wrote in 1989 with the intellectual Alain Finkelkraut, she compared Jospin’s decision with the appeasement of Hitler’s Nazi Germany in the 1930s (“the Munich of the Republican school”), considering the headscarf as a symbol of a sexist and racist Islamist ideology that could not afford any multicultural stance: ‘Professeurs, ne capitalons pas!’ (“Teachers, don’t give in!”), *Nouvel Observateur* (2-8 November 1989). Initiated by Catherine Kintzler, Elisabeth Badinter, Régis Debray, Alain Finkelkraut, Elisabeth de Fontenay (Freedman, 2004: 12).

\(^{254}\) Zelensky wrote in an article in 2003 in the feminist journal ‘Pro-Choix’ owned by two hard-core defenders of Republican feminism and pro-abortion activists Caroline Fourest and Fiammetta Venner: “We are first secularists, and then feminists” (quoting from Dot-Pouillard, 2007: 8). ‘Appel au rassemblement du 5 Fevrier 2004’ (January 27, 2004).

\(^{255}\) ‘Droits des femmes et voile islamique’ (Women’s rights and Islamic veil’), *Elle* (December 8, 2003). See also: ‘Manifest des libertés’ (manifest of liberties), *Libération* (February 16, 2004).
affiliated to the CNDF, which continued to object to both the headscarf and the law,256 these Republican feminists defended the secular Republican as a bolster for women’s rights, which can be considered a historic anachronism.257

Both the mainstream Left and Right adopted the frame that the headscarf symbolized sexism. Other feminists’ claims that a law would not tackle the structural causes of gender inequalities and violence, such as policies of neo-liberalism or the social-economic marginalisation and stigmatisation of immigrants, were not addressed by the Government. Instead, it resorted to a symbolic law presenting the Republic as a guarantee for emancipation. This indicates that it co-opted rather than acted upon their feminist frames which drew attention to structural gender inequalities in French society (see also Stratigaki, 2004).258 My analysis thus corroborates the findings of feminist comparative research that even if women’s movements do manage to gender political debates, they are not always successful in steering the direction of the debate (Mc Bride & Mazur, 2010).

In line with my expectation, the French gender machinery thus provided selective access to feminist movements to gender policy debates, whose project was in line with that of femocrats working within state institutions. The Stasi Commission, which interviewed over 150 people, invited only 4 traditional feminist organisations. The Debré Commission, which invited more than 120 guests, invited only 7 (Lépinard, 2009). Most lacking from policy debates were the targets of the law. The Stasi Commission invited only two women wearing headscarves to policy debates, including Saïda Kada, the co-founder of the Union of Lyon Muslim Sisters (‘Soeurs musulmanes de Lyon’) that was established in 1995 to organize courses outside school for students who were expelled after the Bayrou Directive. The lack of hijab-wearing girls’ own voices in French public and policy debates may explain the persistent perception that most were in need of liberation. This triggered the mobilisation of new feminist coalitions seeking to break the hegemonic veiling that headscarf-wearing girls were oppressed, for example Feminists For Equality (‘Collectif des

256 Such as Maya Surduts, Suzy Rojtman and Josette Trat of the CNDF. They published a petition in 2004, in which they called for more laïcité to safeguard women’s equality and sexual freedom from religious structures but rejected the law: ‘On ne peut taire les critiques a l’egard du voile au nom de la solidarite avec les jeunes des quartiers populaires’ (‘one cannot silence criticism towards veiling in name of solidarity with youngsters from the suburbs), Libération (January 27, 2004). See also: ‘Collectif national pour le droit des femmes communiqué d’octobre 2003’ (Dot-Pouillard, 2007: 5).

257 In 2005, NPNS argued that ‘there is no fight for women’s emancipation other than the struggle against all forms of fundamentalism and obscurantism’, identifying laïcité and mixité as two pillars of the feminist project. Long after the separation between church and state in 1905, however, women were deprived of voting rights (until 1946). Moreover, mixité had neither been part of French secularism: boys and girls were not mixed in public schools until the mid 1950s (Elzekiel, 2006: 271).

258 Stratigaki (2004: 32) defines the process of cooptation of gender concepts as ‘that the meanings of key concepts initially introduced by feminists and originally grounded in feminist ideas about paid and unpaid work were conceptually transformed by their subordination to different policy priorities, resulting in the loss of their potential for changing gender relations;
Féministes pour l’Égalité’, CFE) that published a book in 2008 called ‘Veiled girls speak’. Others directly formed in reaction to NPNS, such as the Parisian Neither Pimps nor Machos (‘Ni Proxos Ni Machos, NPNM, by a local branch of the MRAP), which challenged the dominant view that Muslim men were violent and disintegrated. Lacking relations with influential democrats working within French state institutions, they have, so far, had not been able to change the policy discourse.

**General political opportunity structures**

In line with my expectations, the state’s capacity to act upon policy frames appeared significant due to the particular characteristics of the party system and the balance of power between the different arms of the state. Over time, a trade-off occurred between the constitutional and legislative arms - not unusual for the French institutional setting (Bell, 2004; Favell, 1998: 183). While deputies called for laws to restore order, courts found a ban a too disproportionate curtailment of individuals’ religious freedom rights. The State Council even continued to propagate a moderate approach to secularism in its 2004 annual report, referring to the Dutch approach towards religious symbols as an example to consider accommodating headscarves in the educational realm. But with a majority in Parliament, the UMP Government appeared strong enough to push through restrictive legislation in name of French secularism. Also in the burqa discussion, the UMP-ruled Parliament favoured a law and the Government neglected the legal advice of the State Council. According to Christian Joppke (2011: 27), “what occurred was a political backlash against a perceived dictate of the legal system.” The electoral system and existence of majority governments enabled such a populist backlash against constitutional law.

In contrast to my expectation, the Constitutional Court did not function as a serious institutional constraint to pass restrictive legislation, partly because this court is made up of conservative political notables, many of whom being closely affiliated to the Right (Jacques Chirac, Valerie Giscard d’Estaing, and Jean-louis Debré). It is rather the new Equal Treatment Committee HALDE, operating since 2005, that has functioned as a new important institutional venue for hijab-wearing women who have faced restrictions on religious dress in domains where the 2004 law does not apply, including students of universities or employees working in private kindergarten associations. When a public

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261 In 2008, the director and the higher administration of a university in Toulouse forbade a third year PhD student in micro-biology from wearing a headscarf at the university for reasons of public neutrality and public order. Because she received public funding for her PhD, the school considered her a civil servant needing to appear neutral. When she replaced her headscarf with a bandana, she lost her scholarship. With the financial help of third persons, including academics, she appealed to a local administrative court that rejected her appeal because it considered it unfounded. See: Charlie Beyenne, ‘Nouvelle Polémique sur le port du voile’, *l’Express* (April 23, 2009). In 2008, the new antidiscrimination office Haut Autorité de Lutte contre les Discrimination et pour l’Égalité (from here: HALDE) ruled in favor of two other university students who had been excluded by a Spanish university teacher arguing that their hijabs conflicted with the principle of secularism. They had been illegally discriminated on grounds of religion: HALDE, Délibération relative à un
school forbade hijab-wearing mothers from participating in voluntary public school activities and trips for reasons of secularism, the HALDE argued in 2007 that the principle of secularism and duty of neutrality does not apply to users and visitors of public institutions who are protected from discrimination on grounds of religion. In several other cases it ruled that hijab-wearing women were illegally discriminated against on grounds of religion in the access to public goods and services. It only considered restrictions on religious dress for employees working in private sectors legitimate in case hijabs endangered public safety. In other words, a divergence between the constitutional/judicial and legislative branches of the state appeared over how to manage religious and cultural diversity, with the former being in favour of a liberal approach towards religious dress and the latter of restrictions.

**Power constellations**

Policy responses can be explained by shifts in power constellations. Each time the mainstream right-wing parties RPR or UMP ruled, restrictions on the right to wear headscarves in schools were passed, first as a Directive and later as law. This may be explained by the established Right adopting some elements of the discourse of the increasingly popular Front National regarding immigration and nationalism. Even though the FN never politicised the hijab itself, the timing of the episodes when the hijab was fiercely debated in Parliament exactly coincides with an increasing popularity of Le Pen challenging the mainstream parties’ stable position. One year before the first headscarf affair in 1989, Le Pen had acquired 14% of the first round of the Presidential elections and 10 seats in the European Parliament (11.8%). In 1994, just before the second peak of the discussions, the FN gained 11 seats in the European Parliament (10.5%). And in the Presidential elections of 2002, before the third peak, Le Pen came second with almost 5 million votes (16.9%) more than socialist Prime Minister Jospin and only 3 percentage points behind right-wing Jacques Chirac. The politicisation of the headscarf by the established Right (RPR and UMP) thus correlates with the popularity of the extreme Right. Although it did not call for the expulsion of immigrants, the RPR and UMP – challenged by the dominance of the FN over issues related to immigration and integration – adopted some elements of its discourse by insisting upon the assimilation of Muslims to a secular French nationality and upon a strong state that protects public order. We have also seen how the Socialist party changed position when challenged by the FN challenged, which led to a parliamentary consensus that enabled the passing of the law in 2004.

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262 HALDE, Délibération relative à un licenciement pour faute grave fondé sur le refus de la salariée d'ôter son voile, No. 2008-194 (September 29, 2008).
264 HALDE, Délibération relative au refus d’un hôtelier de louer une chambre à une cliente au motif que celle-ci porte un voile, No. 2006-113 (June 5, 2006); HALDE, Délibération relative au refus d’un instructeur d’auto-école de donner des leçons de conduite à une candidate qui refuse d’ôter son voile, No. 2005-25 (May 19, 2005);
265 HALDE, Délibération relative à la rupture du contrat d’une animatrice au sein d’une association pour enfants autistes ayant refusé de se baigner avec les enfants et de retirer son voile, No. 2006-242 (November 6, 2006).
Historical alliances changed due to the dynamic framing of the issue. When the UMP appropriated gender in a nationalistic discourse of Republican values, this created new and unexpected opportunities among the Right for feminist coalitions warning against the rise of Islamic fundamentalism for women’s rights. Feminist opponents of a ban who have long critiqued the public power of the Catholic Church subsequently found themselves protesting side by side with devout believers claiming public space for Islam. Conversely, feminist proponents of a ban now found allies among the Republican Right whose neo-liberal and nationalistic agenda they had never shared. Also other typical ‘left-wing’ issues, like anti-discrimination and anti-Semitism, were politicised by the Right, namely as a problem of Islamic fundamentalism among Muslims. This created unexpected political opportunities for combative secularist Republicans among the RPR/UMP, which has historically defended a moderate secularism and the religious freedom rights of Catholics. The Right’s attempts to negotiate with orthodox Muslim organisations were, nonetheless, rejected by secularists, who continued to defend a strict separation between church and state. While the PS is traditionally softer on immigrant related issues, its secularist stance prevented them from being allies for hijab-wearing women. In other words, party positions and alliance structures changed as a result of the dynamic and intersectional process of framing between actors. A fruitful alliance emerged between several proponents of legislation who did not necessarily share the same normative frame, which enabled the passing of two laws on religious dress in public space.

To conclude, the French Republican and secular ‘model’ was revitalised during the hijab debate. The principle of gender equality was nationalised as a value that had to be protected from a radical Islam and ‘extended’ to migrant girls by codifying a stricter interpretation of French secularism then had hitherto been practiced. While cleavages and institutional patterns shaped the contentiousness as well as the framing of the hijab issue by constraining and enabling certain policy frames, politicians – influenced by actors inside and outside the political arena - also seized political opportunities by reinterpreting and renegotiating institutional repertoires during the policy process. Linking the hijab to problems like public order, proponents of bans on hijabs managed to circumvent legal constraints of religious freedom rights, reconfigured existing alliance structures, and were able to push for restrictions on the hijab. This clarifies that, through their framing attempts that are linked to their institutional environment, actors still have leeway to reinterpret and extend institutional logics of, for instance, secularism. Framing thus functions as the glue between institutions and actors. The analysis also makes clear that international developments outside France influenced the framing of hijabs, with the threat of a radical Islam becoming a resonant frame after several radical attacks occurred in the mid-1990s and particularly after September 11th. Finally, we have seen how actors referred to European jurisprudence on the hijab to push for new legislation. EU institutions thus paradoxically enabled the restriction of human rights by leaving countries a margin of appreciation which nation-state actors seized to push for bans in the name of national - yet distorted - ‘models’ of state-church relations and citizenship.
Chapter 8. The Netherlands: debates and policies on the hijab (1985-2007)

8.1 Introduction

This chapter presents an analysis of the regulations and political debates regarding the hijab veil in the Netherlands between 1985 and 2007, thereby exploring the idea that the framing and regulation of veiling reflect institutional patterns and policy legacies of state-church relations, citizenship and immigrant integration, and women’s emancipation. Previous research has illustrated that the legacy of pillarisation makes religious identity claims such as the headscarf highly legitimate in the Netherlands, with Dutch policy makers largely approaching migrant minority groups as religious groups (van Kuijeren, 2000, 2001; Reysoo, 1992; Saharso & Verhaar, 2006; Verhaar, 1999; Verhaar & Saharso, 2004). The following analysis corroborates the finding that Dutch policy responses to the headscarf have largely been accommodating when framed in terms of religion.

When the claim for recognition concerned headscarves in the police force and judiciary, however, Dutch politicians reacted more divisively. Principles like the separation between church and state shaped the debate, rather than pillarised notions of religious freedom and an even-handed accommodation of pluralist worldviews. The Dutch ‘model’ of managing religious differences was contrasted with the French ‘model’, but also with the British ‘model’ of multiculturalism with the UK having accommodated sikh turbans and headscarves in police uniforms. Because immigrant integration policies also structured the debates, restrictions on religious dress could be passed that are at odds with the Dutch state-church ‘model’ of pillarisation (see also Maussen, 2009).

Furthermore, when the debate shifted to the Islamic face veil, the logic of religious freedom and pluralism no longer structured the framing of policy debates. Face veiled Muslim women were associated with an extreme and segregating section of the Muslim community whose practices were at odds with ‘Dutch’ citizenship values of gender equality and gendered norms of social interaction. This resulted in calls for full bans on burqas in public space that have, however, not yet been implemented.

This change in framing must be related to a shift in power relations between political parties, changes in immigrant integration policies, and to political events on a national and international level that enabled a discourse that shifted Islam to being a threat to public security and order. The Dutch parliamentary debates on face veils clearly illustrate a departure of Dutch multicultural policies, but the analysis also shows that hijab policies have so far largely remained lenient. Institutionalised principles of equality, non-discrimination, and religious freedom eventually prevented the implementation of restrictive frames in actual policies. This finding points at the path-dependent effect of institutional repertoires of state-church relations on present-day political processes. But also general institutional features of the political system constrained the capacity of the government to act upon policy frames, such as the necessity to find consensus in coalition governments.
8.2 Debates and policy responses

8.2.1 Time line and saliency

Figure 4 shows that the hijab was not a contentious political issue found in the period 1985-2007. Deputies wrote 25 questions to the Government until the new century. In total, 59 parliamentary documents mentioning the hijab were written to ask for a written response, submitted five motions to encourage the Government to act, and launched two law proposals to ban respectively burqas or all types of face covers in public space. The remaining documents concerned questions raised during the weekly question hour (the designated Minister is obliged to attend, and must answer all questions), or minutes of plenary debates and meetings between one of thirteen permanent parliamentary commissions and the Minister, in which the hijab issue was addressed, either in itself or as part of a wider debate.266

The first parliamentary question found was in 1985, when a deputy of the Social Democrats asked the Government for a response about the decision of a municipality of the town Alphen aan de Rijn to forbid headscarves in schools (van Kuijeren, 2001; Rath et al., 1996). The Minister of Education, Wim Deetman (CDA), answered that pupils may cover their hair in public schools in the Netherlands for reasons of religious freedom.267 Hereafter pupils’ headscarves were no longer a political issue. Only in 1998, the debate

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266 Each Ministry, except that of the Prime Minister, has a fixed parliamentary commission that elaborates upon its policy during weekly sittings. The number of Ministries, hence of parliamentary commissions, differs from one cabinet to another. In addition to Ministries, the government can create inter-cabinet departments that have their own parliamentary commissions, such as the Commission of Living, Neighborhoods and Integration that was established in 2003.

267 TK 700 (February 8, 1985).
flared up again, when questions were raised about a trainee teacher who refused to cover her hair in a public primary school (Kuijeren, 2000; Saharso & Lettinga, 2009; Saharso & Verhaar, 2006; Verhaar & Saharso, 2004). The issue was solved in favour of the teacher, and did not trigger political controversy. The headscarf became more controversial after 2003, when it focused on the right of court personnel and police officers to express their religious affiliations, and the hijab developed into a politically contentious issue after 2005, when the debate shifted to the burqa and the niqab (Moors, 2009). That the debate focused so much on the Islamic face cover illustrates, however, that wearing headscarves in public institutions has not (yet) been controversial in the Netherlands.

8.2.2 Actors

Figure 5 shows that until 2002, it was the Left that predominantly politicised the hijab, more in particular the Green Party. Figure five illustrates that the populist Right took the initiative after the List Pim Fortuyn (LPF) victory in the 2002 elections. Of 22 parliamentary questions or motions after 2002, fourteen stemmed from new right-wing populist parties, like the LPF or the Freedom Party (PVV) of Geert Wilders. This accompanied a frame shift (see below). As figure 5 also illustrates, the CDA has remained a constant player, addressing the issue five times.

8.2.3 Policy responses and jurisprudence

In this section, I will briefly discuss the Government’s policy responses to the hijab, together with the jurisprudence of the Equal Treatment Commission (ETC) that significantly shaped the parameters of the political debate. Anyone who believes that he or she has been discriminated against on one of the grounds of the equal treatment law (sex,
religion and belief, political orientation, race - including ethnic background- and nationality, hetero and homosexual orientation, and marital status) may file a petition free of charge. The commission can also be consulted by persons or institutions (including the Government) over antidiscrimination legislation. Although the opinion of this commission is not legally binding, it writes on its website that in 85% of the conflict cases in which it mediates in, and in 70% of court-cases, its jurisprudence is followed-up (the ETC can apply to courts for a binding decision).

From 1995 until 2009, the ETC has ruled on more than 105 hijab conflicts. In most cases, the ETC has ruled in favour of the woman in question. The ETC considers the headscarf and face veil as expressive of Muslim women’s religious conviction, and as such protected by the right to freedom of religion. That Muslims internally dispute whether the headscarf constitutes a religious duty is not relevant for the Commission, which considers each religious practice to be protected by law that is recognised by a substantial part of the religious community in question as stemming from religious doctrines.

The ETC argues that freedom of religion is a fundamental right (there is no hierarchy between fundamental rights in the Netherlands) that can only be restricted if it is demonstrated that the purpose of a headscarf ban pursues a legitimate aim, that it can be reasonably expected to achieve that aim and that such response is proportional (judgement 2003-40 Section 5.9 cited in Saharso (2007: 519). In most cases brought forward, the commission did not uphold prohibitions on headscarves or religious symbols, applying the proportionality test in a strict way. Only in regard to pupils’ face veils did the commission uphold restrictions of the right to wear religious dress, particularly in public schools.

Over the years, politicians have increasingly contested its jurisprudence. The populist politician Wilders requested the abolishment of the Commission in 2008. Also former Minister of Integration Rita Verdonk (then a member of the liberal party VVD) said in 2006 that she wanted to abolish the Commission. We will see how the Government has increasingly departed from the jurisprudence of the ETC, with the result that a similar divergence over multiculturalism develops between the legislative and judicial branches of

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268 In 1995, the first case was brought forward by a woman who worked as a cleaning lady but was not allowed to wear a headscarf. She won her case: ETC 1995-31 (July 4, 1995).
269 When parents wanted to exempt their daughter from gender-mixed gymnastic courses for religious reasons, the Commission argued that it did not directly stem from Muslim faith that girls cannot participate with boys in school courses, hence was not protected by religious freedom rights: ETC 1999-106 (October 4, 1999). The desire not to shake hands with the opposite sex, however, has been recognised as a practice protected by the right to freedom of religion. Depending on the particular context of the case, the Commission sometimes ruled in favour of applicants refusing to shake hands with the opposite sex for religious reasons: ETC 2006-202 (June 13, 2006). In one controversial case, it argued that refusing someone for vocational training to become a teaching assistant is an illegitimate form of indirect discrimination on grounds of religion that disproportionally requires minorities to conform to a majority’s way of greeting: ETC 2006-51 (September 30, 2005). But in different cases, it ruled in favour of employees or public schools that required personnel to shake hands, mainly for reasons of sex equality: ETC 2007- 180 (January 19, 2007), ETC: 2002- 22 (March 5, 2002). In the latter case the commission considered the aim of a school legitimate to transmit norms and values about general codes of conduct in a multicultural school and argued that it did not disproportionally hinder Muslims in their right to freedom of conscience when they were requested to shake hands.
270 No. 941, ‘Vragen over het advies van de commissie gelijke behandeling over het dragen van hoofddoekjes voor politieagenten’ (November 29, 2007).
271 ‘Verdonk wil af van Commissie Gelijke Behandeling’, Trouw (November 9, 2006).
the state as we have seen in France. Table 6 shows the policy responses of the Dutch Government to the hijab over time.

### Table 6 Dutch policy responses to the hijab

<table>
<thead>
<tr>
<th>Time</th>
<th>Government</th>
<th>Policy response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1985</td>
<td>Lubbers I: CDA-VVD, Minister of Education Wim Deetman (CDA)</td>
<td>Case to case approach: policy statement that religious expressions should be accommodated in public schools for pupils.</td>
</tr>
<tr>
<td>2003</td>
<td>Balkenende II (2003-2006): VVD, CDA, D'66, Minister of Education Maria van der Hoeven (CDA), Minister of Interior Johan Remkes (VVD), Minister of Justice Piet-Hein Donner (CDA)</td>
<td>Case to case approach: clothing directive to schools stipulates that religious expressions in public schools can only be prohibited for reasons of safety or communication. Religious schools may discriminate on grounds of religion under certain circumstances.</td>
</tr>
<tr>
<td>2004</td>
<td>Balkenende IV (2007-2010): CDA-CU-PvdA, Minister of Interior Guusje Ter Horst (PvdA), Minister of Justice Piet-Hein Donner (CDA)</td>
<td>Policy document stipulates that religious expressions by civil servants can only be prohibited for reasons of safety or communication. In 'authoritative' functions like police and judiciary can headscarves be forbidden for reasons of public neutrality.</td>
</tr>
<tr>
<td>2008</td>
<td>Balkenende IV (2007-2010): CDA-CU-PvdA, Minister of Interior Guusje Ter Horst (PvdA), Minister of Education Ronald Plasterk (PvdA)</td>
<td>Plans to create national regulations that forbid all religious, philosophical and political expressions for police personnel working with citizens.</td>
</tr>
<tr>
<td>2009</td>
<td>Balkenende IV (2007-2010): CDA-CU-PvdA, Minister of Interior Guusje Ter Horst (PvdA), Minister of Education Ronald Plasterk (PvdA)</td>
<td>Pending law proposal that will prohibit all types of face covering in public and private schools. New clothing directive that forbids face veils in civil service.</td>
</tr>
</tbody>
</table>

### Policy responses regarding the hijab in the educational realm

In 2003, the Minister of Education of the coalition Government of CDA, VVD and D66 (Balkenende II, 2003-2006) sent a Clothing Directive to schools that was largely based upon the jurisprudence of the Equal Treatment Commission (ETC).

272 The occasion for the Directive, which has only an advisory character, was a range of cases brought forward to the ETC that year by hijab-wearing pupils and trainees who had been refused by Christian schools because of their headscarf. Another highly mediatised conflict that had triggered the policy response was a conflict in 2003 between a secondary school in Amsterdam and two students who had insisted upon their right to wear face veils (see below on face veils).

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272 ‘Leidraad Kleding op Scholen’ (June 11, 2003); WJL/2003/23379 (June 2, 2003); WJL/2003/25011 (June 10, 2003).
In the Government’s Directive of 2003, it was written that public schools cannot forbid pupils to wear headscarves or other religious symbols, because that would discriminate against them on grounds of religion. In contrast to France, the directive argued that the mere fact that some parents consider veiling to be ostentatious was not recognised as sufficient grounds to ban religious expressions in public schools.\textsuperscript{273} Only in case of safety concerns or for pedagogic reasons of communication, it could be reasonable to request pupils to remove hijabs, but only if no other means existed to reach that aim.\textsuperscript{274}

The Government’s directive also argued that public schools cannot forbid teachers to wear headscarves, following the jurisprudence of the ETC that the mere fact that a teacher wears a headscarf does not preclude her from teaching in accordance to the public character of the school. The first time the ETC ruled on a teacher’s right to wear headscarves was in 1999, when a trainee teacher brought her case to the ETC after she was rejected for a public school internship because of her headscarf.\textsuperscript{275} The school in question had received various complaints from parents of Turkish background who had threatened to remove their children from school because they did not want to expose their children to the headscarf - something they considered to be a symbol of religious fundamentalism. The school thus proposed to the Equal Treatment Commission that teachers had to be neutral in order to safeguard pupils’ different beliefs and the order within the school. The Commission argued that the aim of state neutrality in public education was legitimate, but judged that the fact that the trainee “believes in a religion and expresses this by wearing a headscarf does not preclude her having an open attitude and being capable of teaching in accordance with the character of the school as a public educational institution” (cited from Saharso, 2003: 15).

In other words, the ETC did not address the claim of negative religious freedom of parents who wanted to shield their children from orthodox religious peer pressure. It concluded that the woman in question was not only directly discriminated against on grounds of presumptions about her faith. She was also indirectly discriminated against, because a ban would disproportionately hinder her practicing a career as public school teacher. Practicing Muslim women would only be able to work in private Islamic schools, whereas teachers who do not cover can work in both public and private schools. In other cases the ETC has argued that the principle of non-discrimination also obliges schools to actively seek to enhance the visible plurality of their educational staff by creating internships for hijab-wearing students.\textsuperscript{276} However, when the question arose whether

\textsuperscript{273} In similar vein, it argued that children have the right to freedom of speech/conscience to wear clothes associated with right-wing extremism. Only if it was proven that by their dress pupils disturbed public disorder, schools could prohibit such cloths. Baseball hats or belly-showing T-shirts, in contrast, could be prohibited.

\textsuperscript{274} In 1997, it came to a case to the Equal Treatment Commission where a school had asked a pupil to remove her headscarf during gymnastic courses. The ETC argued that this was a form of illegitimate discrimination on grounds of religion. Even though the goal of safety that the school brought forward was considered legitimate, it was not proven that headscarves really caused problems if they were adequately pinned in the hair. It recommended the school to consider special sports scarves during gymnastic school courses: ETC 1997-149 (December 16, 1997).

\textsuperscript{275} ETC 1999-18 (February 19, 1999).

\textsuperscript{276} The Commission has followed this line of argument in several other cases of conflict between schools and interns. It has stated that the principle of non-discrimination also obliges public educational institutions to take measures to protect interns from discrimination, e.g. by creating
public secondary schools were obliged to offer prayer rooms for Muslim pupils, the ETC concluded that the state only had the duty to safeguard equal opportunities by removing obstacles that disproportionately affect practicing Muslims, not to actively enable believers to practice their faith by creating space for prayers.\textsuperscript{277}

The Government also followed the jurisprudence of the ETC regarding religious dress in private (but fully state-funded) schools, organised on grounds of a specific religious denomination. The ETC has argued several times that private Christian schools have the right to discriminate on grounds of religion by requiring pupils or teachers to remove symbols that express a different religion than the one practiced by the school, such as Islamic headscarves.\textsuperscript{278} In its advice, it referred to Article 23 of the Dutch Constitution and Article 7 of the Dutch Equal Treatment Law, which stipulates that private schools have the right to discriminate on grounds of faith to preserve their specific denominational character. Also orthodox Islamic schools have the right to make clothing rules that require pupils and staff to conform to their particular religious identity and mission, by demanding them to cover their hair. And if parents want their children not to be exposed with the religious beliefs of others, the ETC argued that they may establish their own (state-funded) private schools that are allowed to demand of pupils to visibly hide their particular beliefs. It referred to the European Treaty of Human Rights, which stipulates that the right to religious freedom also comprises the right not to adhere to any belief.\textsuperscript{279}

However, the ETC has only endorsed such discrimination if schools have clearly embedded this particular denominational identity in their school laws and regulations, and practiced their policy in a non-discriminatory way. Moreover, they have to prove that such dress requirements are necessary for the fulfilment of the duties attached to the job of that teacher. Since most Dutch Christian schools today have become multi-ethnic and multi-religious schools, only few Christian orthodox schools will fall under the strict proportionally test of the ETC that was repeated by the Government in its Directive.\textsuperscript{280} When it came to a conflict in 2005 between an Islamic school and a woman who had been refused for the job of Arabic teacher because she did not want to wear a headscarf, the Commission ruled in favour of the woman in question who identified herself as Muslim. It argued that the school had not been able to illustrate that the wearing of headscarves was necessary for the function of an Arabic teacher, because the school had not required non-Muslim teachers to cover their hair who taught Arab. Although the school had the right to

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\textsuperscript{277} ETC 2000/51 (August 3, 2000). The State Secretary of Education Karin Adelmund (PvdA) also responded that public schools are free but not obliged to offer opportunities to pray or to follow religious education: TK 547 (December 14, 1999).

\textsuperscript{278} E.g. ETC 2003-112 (August 5, 2003); ETC 2008-121 (October 15, 2008); ETC 2007-61 (April 16, 2007); ETC 2007-96 (November 20, 2007).

\textsuperscript{279} ETC 2005-19 (February 11, 2005). Although the ETC members ruled that in principle, a private school based on secularism may discriminate people on grounds of (non-)religion, this particular school in question had not sufficiently specified its identity in its statues in order to legitimize its refusal of a teacher-trainee wearing a headscarf.

\textsuperscript{280} The secondary school City College St Franciscus in Rotterdam and the St Gregorius College in Utrecht have, for instance, introduced clothing rules that forbid headscarves in order to avoid identity politics and peer pressure, but this seems legally untenable: 'Op het Citycollege is een hoofddoek verboden. Het hoofddekselverbod in Vlaanderen leidt tot discussie op Nederlandse scholen’, \textit{NRC Handelsblad} (October 10-11, 2009).
stipulate in its statutes that its foundations were based on the Soenna and the Qu’ran, and that according to its interpretation of those religious sources women had to cover themselves, it could not treat Muslims and non-Muslims differently in this dress code.\(^\text{281}\)

In short, headscarves are largely accommodated in public schools and, in line with Dutch pillarised traditions of equal treatment and religious freedom; Islamic schools have an equal associational freedom as Christian schools to organize on grounds of their religious beliefs. Only in regard to face veils, policy responses have become more restrictive (see below).

Policy responses to the hijab in public service functions

In a policy document of 2004, called ‘Constitutional Rights in a Pluriform Society’, the Balkenende II Government (CDA, VVD, D66) stipulated its policy response to religious symbolism in civil service functions.\(^\text{282}\) In the document, the Government repeated its stance regarding the right of teachers to wear headscarves in public schools. It also confirmed the individual right of civil servants to wear symbols expressing their personal religious affiliations. Only in case of safety problems or functional obstacles were clothing restrictions on religious dress deemed legitimate, like face veils hindering communication between officer and client. Again, local conflicts in the city of Rotterdam had been occasion for the Government to respond to the issue, where the Fortuynists had won victories in local elections and mainstream parties reacted by prohibiting certain types of hijab for civil servants.\(^\text{283}\)

In its policy report, the Government differentiated between, on the one hand, regular civil servants and, on the other hand, officers working in the judiciary (including court-clerks) and law-enforcement (such as the police force or public prosecutors). While it argued that the former did not necessarily need to appear neutral, the latter had to avoid any appearance of partiality to maintain people’s trust in the authority and independence of the state, by removing all symbols of personal religious, philosophical or political affiliations. This differentiation between regular and authoritative public servants had been advised by the Commission Blok, officially named the ‘Temporary Commission Research Integration Policy’, which had been established by the Parliament to study why the integration of migrants in Dutch society had failed.\(^\text{284}\) It consisted of seven members of

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\(^{281}\) ETC 2005-222 (November 15, 2005).

\(^{282}\) TK 29614, no. 2, 1-6-2004 ‘Grondrechten in een pluriforme samenleving’ (June 1, 2004).

\(^{283}\) The affair started locally, when the Social Democrats and Christian-Democrats in the district Charlois of the municipality of Rotterdam asked the council to set rules for women to wear long headscarves and chadors as public servants, because they thought these conflicted with ‘Dutch norms and values’, particularly gender equality. Because Dutch tolerant practices of secularism would give leeway to religious fundamentalism, the parties argued in favour of strict neutrality for public servants, requiring that they remove all religious signs. Yet, a bandana was considered tolerable. ‘Charlois wil geen hoefddoekjes achter l oketten; Rotterdamse PvdA’er Dominic Schrijer timmert opnieuw aan de weg in debat over allochtonen’, Volkskrant (February 19, 2004).

\(^{284}\) TK 28 689, nr. 8, ‘Bruggen Bouwen’ (Tijdelijke Commissie Onderzoek Integratiebeleid), (March 2004). The commission had been initiated by Jan Marijnissen of the Socialist Party SP who had submitted a motion on 19\(^{\text{th}}\) September 2002 (28600, no. 24,) to execute research into why the integration of migrants in Dutch society had failed, which was the dominant problem analysis at that time. The commission’s report was discussed at length in Parliament, because deputies did not share its conclusion that the integration of migrants in Dutch society had predominantly been successful (see Scholten & Nispen, 2008).
different parliamentary parties, and was headed by Stef Blok (VVD). One of the conclusions of the Commission was that the wearing of the headscarf was a matter of individual choice and one’s own responsibility. It could only be curtailed for functional reasons, such as the duty of neutrality for officers working in law-enforcement or the communication between pupil and teacher.

The Government’s policy response to public officers departed from the jurisprudence of the ETC. In a 2001 case brought forward by a court clerk who had been forbidden to wear a headscarf by a local court in the town of Zwolle, the Committee members ruled in favour of the woman in question. They argued that even though the aim of neutrality was legitimate, it was too disproportionate to demand of clerks to privatise their religious affiliations. Unlike a judge, the function of a clerk did not necessarily require a neutral appearance. The effects of a full ban on religious symbols, which would indirectly discriminate against practicing Muslim women, therefore did not outweigh the aim of public neutrality. Minister of Justice, Ben Korthals (VVD), however, argued that all personnel in the judiciary had to appear neutral in order to maintain people’s trust in the independence and impartiality of the judiciary (Saharso & Verhaar, 2006).

In 2004, then-Minister of Interior Johan Remkes (VVD) also stated that police officers had to appear neutral if they had contact with citizens. With that, Remkes differed from his predecessor Bram Peper (PvdA) - Minister of Interior from 1998-2000 - who had investigated the option to design special headscarves for prison guards and police officers to increase their safety during work. The occasion for the policy response was a report that had been sent to Remkes by the internal advisory committee of the National Board of Chief Commissioners of Police (‘Raad van Hoofd Commissarissen’, RHC). It advised the Minister to create national regulations that police officers should appear ‘life-style neutral’ by removing all personal affiliations of religion, (political) ideology or belief. After having received the report, Remkes asked the ETC for an advice about the

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285 The Parliament may also establish special information commissions (‘onderzoekscommissie’) to study a particular topic in more depth, having the right to invite guests and experts, or inquiry commissions (‘enquete commissie’) that may hear guests under oath. The commission consisted of Stef Blok (VVD, president), Ali Lazrak (SP, vice-president until September 2003), Ursie Lambrechts (D66, until the elections of January 2003), Karin Adelmund (PvdA), Ineke van Gent (Groen Links), Mirjam Sterk (CDA, until she was replaced by Nirmala Rambocus after the elections of January 2003) and Joao Varela (LPF).


287 ETC 2001-53 (June 22, 2001). The applicant was defended by Famile Arslan, who was the first graduate of law wearing a headscarf in the Netherlands: ‘De toga kent geen kleur’, Contrast 31 (October 10, 2002).

288 TK 59 (March 17, 2004): 3891.

289 Letter of mr. P. Deelman (of the Council of Head Commissioners) to the Minister of Interior Affairs (March 28, 2006), ‘uiterlijke verschijningsvormen Nederlandse Politie’. The council had already issued an advice in 2004 to its corpses that wrote that all police staff having public contacts should strive for ‘life-style neutral’ clothes and accessories, meaning abstaining from expressing any personal beliefs: ‘Notitie Landelijk kledingreglement’ (January 16, 2004) of the Advisory Committee Kleding Nederlandse Politie of the Council of Head Commissioners.

290 This internal advisory committee had been established after someone within the RHC had announced plans to develop new uniforms for police officers, including special headscarves. Such an option already existed for administrative personnel in the police force, but with the new uniform headscarf wearing women could also become police officers. Whereas the Union of Police
legal feasibility of such national regulations that would oblige police officers to appear neutral.

In 2007, the ETC issued its report in which it repeated that the aim of public neutrality was legitimate, but it questioned whether a neutral and representative appearance necessarily meant that all expressions of personal beliefs had to be privatised. Referring to the legal practice in the United Kingdom and Canada, the Commission argued that the Government could also consider the inclusion of a headscarf in the police uniform, particularly because ‘in a pluriform society tolerance and broad-mindedness are important values’. But there was no political will to pursue such a multicultural stance. Deputies of the Conservative Liberals (VVD) and the populist Right (PVV) raised objections to the advice of the Equal Treatment Committee. When the PVV submitted a motion to forbid headscarves in the police force it was supported by a majority of Parliament, on the condition that other religious symbols would also be prohibited.292 On 14th November 2008, the new Minister of Interior, Guusje ter Horst (PvdA), declared that her Government had agreed that, in consultation with police unions, it would develop new regulations about police uniforms. In order ‘to radiate authority and respect’ and ‘to appear impartial and objective’ all police employees working with citizens had to remove political, religious and philosophical signs that illustrated someone’s ‘private identity’, such as headscarves, crucifixes and kippahs, and also the pink triangle (which can indicate someone’s sexual preference).293 The current Government of VVD and CDA, which depends on the support of the PVV, announced in its coalition agreement that it will proceed with the idea of prohibiting headscarves in the police and judiciary, without mentioning other religious expressions.294

**New policy responses to the face veil**

In its Clothing Directive of 2003, the Dutch government for the first time responded to the wearing of face veils in public schools. It argued that in certain circumstances, schools could forbid pupils to cover their faces, referring to a ruling of the ETC of April 16, 2003 about face covers in public secondary schools.295 This case had been brought forward by two students of a public secondary school in Amsterdam who were being educated to become schoolteachers at kindergartens and had been asked to remove their face veils at school. The two adolescents told the school directory that they would only be willing to remove their niqabs in class or when working with women and children during their

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292 TK 31200 VII no. 38 (November 29, 2007). The next week, the SP, CDA, VVD, SGP, independent deputy Rita Verdonk and the PvdD (Party for Animal Rights) voted for the motion of the PVV to ban headscarves: TK 31 (December 4, 2007).
293 TK 29 628, no. 109 (November 14, 2008).
traineeships. But the school insisted upon them removing face veils in the building, and subsequently the two girls brought their case to the Equal Treatment Commission. They argued that they wore the niqab for avoiding the male gaze, which they considered a religious duty and thus they felt discriminated against on grounds of religion. When the girls understood that one of the members of the commission was deaf and could not lip-read what the girls said, the girls showed their flexibility by removing their niqabs, despite one male member of the commission being in the same room (see also Prins & Saharso, 2008).

This time, the ETC argued in favour of the secondary vocational school in question. It considered its aims for a general dress-code on face covers legitimate and a ban both necessary to fulfil those aims and proportional. The motivations of the school to prohibit face veils, which had convinced the ETC and which were repeated in the clothing directive, were: first, to safeguard public safety at school, because the wearing of face veils hindered the necessary identification of people in and around the school; and second, to advance didactic communication, because teachers cannot assess whether pupils understand their teaching if they wear face veils; and third, to comply with the school’s pedagogic duties to train pupils to become assistants in schools and kindergartens. If pupils insisted on wearing face veils, it could not find appropriate internships for them. It did not elaborate whether the claim for sex-specific treatment infringed upon the principle of gender equality. With this ruling, the ETC departed from previous advice of 2000, in which it had concluded that schools could not prohibit face covers, because it was not proven that they really impeded interpersonal communication between teachers and pupils (see also: Loenen, 2006; Moors, 2009). After the Government’s Directive, some schools created clothing rules that prohibited the wearing of face veils. Also some universities chose to ban face veils, such as Leiden University (2003), Utrecht University (2003) and the VU University in Amsterdam (2004), while other universities continued to allow students to cover their faces during lectures.

The parliamentary debate about face veils flared up when Geert Wilders proposed a motion in a parliamentary debate on terrorism in 2005, calling for a ban on the burqa in

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296 ETC 2000-63 (September 6, 2000). The first time the ETC ruled on Islamic face covers was in 2000, when a higher educational establishment that trained pupils to work in health care asked its advice about its new school regulations. The members of the Commission reasoned that a general dress code that forbids face covers disproportionately harms one particular group in society and is thus a form of indirect discrimination. Although they considered the didactic arguments of the school legitimate, it could not find sufficient prove that a ban was really necessary and answering a real need. After all, various teachers had not found it problematic to communicate with or teach the few girls that wore face covers in their school. It argued that ‘eye movement are still clearly visible and also bodily language is not fully hampered by the chador. On top of that, a school should reckon with the fact that – even without face veiling - in a multicultural society like the Dutch one not all groups express their feelings through facial expressions’.

297 At the University of Groningen, a Dutch convert was asked to remove her veil only during exams or working group discussions. She was allowed to cover in the building and during public lectures. At the VU University in Amsterdam, some members of the faculty of Law launched a public discussion on the plans of the dean to develop a set of regulations about clothing and behaviour. Its text wrote that face veils were prohibited and ‘shaking hands and making eye-contact will be practiced as is common in our western culture’ (Moors, 2009: 397). See also: ‘Ik kies ervoor me uit te sluiten’! Studenten keren zich tegen voorgenomen sluierverbod op VU’, NRC Handelsblad (October 5, 2004). And: ‘Studente met gezichtsslui er krijgt bedenktijd’, DVHN (June 8, 2007).
public spaces. Wilders was then running as an independent candidate, having left the VVD because of his discontent with the party’s lenient stance on Turkey’s EU membership. In February 2006, Wilders established his Freedom Party PVV. In addition to the populist Right (Groep Wilders, LPF and former Fortynists Groep Nawijn, Groep Eerdmans/Van Schijndel, Groep van Oudenallen) and the conservative Liberal party VVD, the confessional parties CDA and (in a second round) SGP also voted in favour of Wilders’ motion in 2005. However one of the cabinet’s coalition partners, Liberal Democrat party D’66, was hesitant to implement such a ban. Minster of Justice Piet-Hein Donner (CDA) also objected to the constitutionality of such a law (Moors, 2009).

In light of this political impasse, Minister of Integration, Rita Verdonk, installed a legal committee in August 2006 to opine about the legal options and possible social consequences of a full ban. The Commission, headed by Professor of Law (and current member of the Council of State) Ben Vermeulen, consisted of various legal scholars, theologians and an imam. The Commission Vermeulen argued that a prohibition of only the burqa was discriminatory, and that a general prohibition on all types of face covers infringed upon human rights to religious freedom. Only in case of public security were prohibitions of religious dress legitimate, but current legislation already provided sufficient means for authorities to demand face-to-face visibility in specific circumstances. The only lacuna it observed was in public transportation (Vermeulen, 2006).

Shortly after the Government received the commission’s report, the cabinet fell, due to an internal coalition conflict. New elections were held on 23rd November 2006. Three months later, in February 2007, the new centre-Left coalition Cabinet of PvdA, CDA and the orthodox Christian Union CU took office. While the CDA favoured a general prohibition of face covers, the PvdA and CU were hesitant. The new Minister of Integration, Ella Vogelaar (PvdA), and her State Secretary, Nebahat Albayrak (PvdA), were against a full ban. In its coalition agreement, which must be read as a compromise, the Government announced its willingness to prepare a ban on all types of face covers only in certain domains for security reasons. Not waiting for the Government’s proposal, two deputies submitted their own law proposals, one by Henk Kamp of the VVD wanting a ban on all types of face covers, and another by Geert Wilders and Sietze Fritsma of the PVV that advocated a specific prohibition of the burqa. The Parliament sent the latter’s proposal to the Council of State for legal advice, which also argued that a full ban on only

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299 In 2006, when his previous motion had not yet been followed up by the government, Wilders again launched a motion to ban the burqa. This time also the SGP voted in favour of the motion for reasons of public safety and to signal to the government it needed to respond to the Parliament: TK 16 (October 24, 2006).
300 Professor B.P. Vermeulen; Professor N. Doorn-Harder; Professor T. Loenen; Professor F. Leemhuis; imam A. van Bommel; and jurist J.P. Loof. Rapporteur: Vermeulen.
301 ‘Samen Werken, Samen Leven. Coalitieakkoord tussen de tweedekamerfracties van CDA, PvdA, en Christen Unie’ (February 7, 2007).
the burqa discriminated on grounds of religion. It also considered a full ban in public space too disproportionate to reach the (legitimate) aim of public safety.\textsuperscript{303}

In a letter to the Parliament on 8\textsuperscript{th} February 2008, the centre-Left Government Balkenende IV (PvdA, VVD, CU) announced its plans to introduce legislation that prohibits all kinds of face covers in primary and secondary educational establishments, both in private and public, and both for pupils or teachers and for parents and visitors. The Government repeated that such a ban was necessary to identify people in and around the school, as well as to enable the communication between pupils and teachers. It added that face veils were incompatible with the ‘active citizenship and social integration’ schools needed to teach to pupils, and further impeded the equal opportunities of men and women by complicating women’s social participation.\textsuperscript{304} The Government also sent a new clothing Directive to civil servants in the Federal Government forbidding face covers, and encouraging local governments to follow suit.\textsuperscript{305}

The Government’s ideas were discussed with several Parliamentary Commissions on 24\textsuperscript{th} April 2008. All parties except the Christian Union agreed with the Government’s plans.\textsuperscript{306} In September 2008, the Government sent a letter to the Parliament to explain its upcoming regulations,\textsuperscript{307} which were discussed with the Parliamentary Commission of Education on 24\textsuperscript{th} November 2008.\textsuperscript{308} Even though higher educational establishments objected to legislation and had not been included in the initial plan, the Minister of Education Ronald Plasterk (PvdA) accepted the wish of the Commission to extend the ban to (private) higher educational institutions for adults as well. The PVV had successfully presented the tolerance of face covers by some Islamic universities as a dangerous form of Dutch pragmatism that would gradually change Dutch society into an Islamic country where women’s rights were bashed.\textsuperscript{309} In 2009, the Government’s law proposal was sent to the State Council for a legal advice. On 21\textsuperscript{st} May 2010, the Council of State sent its unpublished advice to the new Government (VVD, CDA, supported by PVV) about its proposal.\textsuperscript{310} In its coalition agreement of September 2010, the Government returned to the initial motion of Geert Wilders, announcing its plan to ban all face covers in public space, including burqas.\textsuperscript{311}

\textbf{8.3 Diagnoses and prognoses in the parliamentary debates on the hijab}

Six frames structured the parliamentary debate on the hijab. The debate in the late-1990s regarding teachers’ right to wear headscarves was framed in terms of a discrimination and
participation frame, as well as religious freedom and pluralism frame. Not the hijab itself was problematised, but the obstacles that headscarf-wearing women faced while participating in Dutch society, such as discrimination. This was seen as hindering their emancipation and integration in Dutch society, as well as conflicting with Dutch principles of religious freedom. In contrast, a conflict with neutrality frame structured debates on headscarves in the judiciary and the police force. The face veil was also framed in terms of participation, but the causal logic of the previous participation frame changed when the face veil itself became seen as the main obstacle to women’s emancipation and integration, rather than discrimination or institutional obstacles in society. Moreover, three new frames appeared when the debate shifted to the face veil after 2003. One problematised the oppression of hijab-wearing women, locating the problem in a patriarchal Muslim culture; another discussed the problem of face veils jeopardising social cohesion, illustrating a segregation and rejection to integrate; a final sub-frame discussed face veils as conflicting with public security. While the frame that the hijab was a symbol of a politicised Islam at odds with Dutch culture was also put on the agenda by the far-Right, it only indirectly structured Dutch policy debates.

1. State church frames
When the pupils’ headscarf first appeared on the agenda in 1985, it was mainly framed in terms of religious freedom and pluralism. The municipality of Alphen aan de Rijn, which had forbidden headscarves in public schools, initially consulted a legal scholar in Islam to ask whether veiling constitutes a religious doctrine. When the scholar argued it was not a religious duty to cover, the municipality concluded that headscarves could be forbidden, in order to relieve young girls from religious pressure to cover. This was challenged by the Dominican priest David van Ooijen, who was an MP for the PvdA. He argued that it was not up to governors to interpret religious doctrines, and since headscarves do not hinder any pupils’ educational development, the Minister of Education agreed that headscarves should be allowed in public schools.312

In contrast to France, very few deputies argued that the headscarf needed to be banned from public schools in order to protect girls’ falling victim to patriarchal community pressure. Only one question was found by a member of the Socialist Party (SP) in 2004, concerning images of women with headscarves in so-called ‘pre-school’ (age 4-6) textbooks. Vergeer argued that covered women provide wrong role models to young children, who should instead learn that ‘men and women are equal and emancipated’ and receive education according to a ‘Dutch framework’.313 Without addressing the claim that the headscarf symbolised gender-inequality, the Minister of Education Maria van der Hoeven (CDA) argued that children had to learn about multicultural and religious differences in Dutch society. Moreover, it would help ‘allochtones’ to recognise themselves in the educational material. Becoming a Dutch citizen thus did not, as in France, require one to take a distance from their particular religious and cultural identities

312 TK 700 (8 February 1985). The school had asked the opinion of an Islamic scholar of the University of Leiden, professor J. Brugman, whether the headscarf concerned a duty for Muslim women. The Minister emphasized that forbidding headscarves in public schools did not fit ‘our’ society. Also the Dutch Centre for Foreigners (‘Nederlands Centrum Buitenlanders’, NCB) protested against the ban (Rath et al., 1996).
313 TK 27020 and TK 29284, no. 37 (January 12, 2004: 5, 13.)
in public schools. In contrast, public school material had to represent the multicultural society.

Furthermore, teachers’ right to express their personal religious beliefs in public schools was hardly disputed. This issue emerged on the agenda in 1997 from a participation and discrimination frame (see below on gender equality frames). Except for the PVV in 2008, no party has ever challenged the Government’s accommodative stance regarding pupils’ and teacher’s headscarves in public schools. In a response to the PVV, Minister of Education Ronald Plasterk (PvdA) repeated that a ban on religious symbols for teachers discriminated against people on grounds of religion. Removing headscarves was, moreover, not deemed necessary in building a relation of trust between pupils and teachers, or to guarantee neutral and authoritative appearance.\(^{314}\) There was slightly more parliamentary resistance to the policy that private religious schools may discriminate on grounds of religion, from, among others, the Greens, who in 2003 raised questions about Christian schools forbidding pupils to wear headscarves\(^ {315} \), and from the Social Democrats who in 2005 objected to the fact that Islamic schools may demand girls to cover.\(^ {316}\) So far, these attempts have borne no fruit: Minister of Education, Maria van der Hoeven (CDA), responded that religious schools in the Netherlands have the constitutional right to require pupils and staff to conform to the denominational foundations of the school.

With the emergence of the Fortuynists in the Parliament after 2003, headscarves in public functions were politicised. In 2004, the LPF requested a parliamentary debate about religious symbolism in public service. It argued that the wearing of headscarves in public functions undermined the separation between church and state, and even endangered Dutch liberal democracy: “my fraction worries about the gradual Islamisation of the Dutch society. Some of our fundamental values are undermined: the equal treatment of men and women, of homosexuals and heterosexuals, and last but not least the separation of church and state. The LPF fraction thinks that the Dutch citizen has a right to a neutral state. This right, derived from modernity, is one of our basic citizenship rights.”\(^ {317}\) Referring to the French example, the LPF requested the codification of secularism in the Dutch constitution and advocated for a ban on all religious expressions in the overall public service.\(^ {318}\)

Members of the governing parties VVD, D66 and CDA, as well as of the oppositional parties PvdA, SP, CU and SGP all agreed, however, that the neutrality of the state was not necessarily at stake if civil servants wore headscarves.\(^ {319}\) Hence, they primarily viewed the headscarf a personal religious expression that was in line with Dutch secularism, although the SGP agreed with the Fortuynists that it worried from its Christian

\(^{314}\) TK 2387 (June 26, 2007): Letter of Wilders and Bosma (PVV) to Minister of Integration Vogelaar about clothing rules in a foundation for primary schools (Christoffel voor Onderwijs en Opvoeding) in the city of Roermond. See also TK 36 (December 11, 2008).

\(^{315}\) TK 738 (January 1, 2003).

\(^{316}\) TK 30 304, no. 8 (December 12, 2005).

\(^{317}\) TK 59 (March 17, 2004): 3880. See TK 58 (March 16, 2003): request for interpellation of LPF (March 16, 2004). The parliamentary debate with the cabinet was followed by a parliamentary debate with Commission Blok about its advice on religious symbols in public service: TK 65 (April 4, 2004) and TK 66 (April 22, 2004).

\(^{318}\) See also open letter of Fortuynists Eerdman and van der Brink: ‘de neutrale staat is een grondrecht’, Volkskrant (February 21, 2005).

\(^{319}\) TK 59 (March 17, 2004).
foundations about the increasing Islamisation of Dutch society. In fact, deputies contrasted the French approach to religion with the Dutch approach.

Nevertheless, deputies also disliked the UK approach that the Equal Treatment Committee had advocated towards religious dress in public functions. All parties, except the Greens, objected the idea that police officers could wear headscarves. They argued that police, customs officers and army personnel executed such particular authoritative functions that they had to privatise personal (religious) affiliations for reasons of public neutrality.\(^{320}\) Jeroen Dijsselbloem of the PvdA had suggested that exceptions could be made for police officers.\(^{321}\) But Boris van der Ham of the D66 fraction considered this an infringement upon the non-institutionalised principle of separation between church and state, if the state would pay for headscarves for prison guards or police officers. Also in December 2007, when the debate about headscarves in police officers flared up again, a majority of Parliament argued that religious symbols needed to be prohibited in the police.\(^{322}\) Even the small orthodox Christian Union argued that police officers should not express their personal beliefs, in order to maintain citizens’ trust in the independence of the state.\(^{323}\) Also the ideas of Minister of Transportation Karla Peijs (CDA) did not gain support, when she publicly stated in 2006 that a Minister with a headscarf would increase the representativeness of the Government.\(^{324}\)

The Greens were the only party who continued to discuss the issue from the religious rights and discrimination frames. In 2001 already, the Greens had challenged the decision of the Minister of Justice, Benk Korthals (VVD) of the second Purple Cabinet, to disregard the advice of the ETC allowing court-clerks to cover. Making a race analogy by comparing the headscarf to skin colour, MP’s Halsema and Rabbae argued, “We would never demand of a judge to hide his skin colour; he is not able to. Certain characteristics belong to people and can’t be removed. If the women in question experience it like this, we should accept that.”\(^{325}\) Halsema thus contested the concept of neutrality underlying the decision of the Government. According to her, it would relegate ‘neutrality’ to the eye of the beholder, whose perception is coloured by personal and cultural experiences: “it is nonsense to assume that a woman with a headscarf per definition appears non neutral, whereas an autochtonous (native Dutch) man of fifty years old with dandy shoes from the Gooi per definition is.”\(^{326}\) According to Halsema, someone’s suitability for the function of a clerk (but also police officer) should be decided on grounds of her education, not her religious dress. Relegating religious symbolism out of the public realm was not neutral but actually prioritised secular and atheist world views: “a neutral state means that all citizens are

\(^{320}\) See also TK 1485, written question of CDA (March 15, 2004).

\(^{321}\) TK 59 (March 17, 2004): 3885.

\(^{322}\) TK 31200 VII no. 38 (November 29, 2007). The next week, the SP, CDA, VVD, SGP, independent deputy Rita Verdonk and the PvdD (Party for Animal Rights) voted for the motion of the PVV to ban headscarves: TK 31 (December 4 2007).


\(^{324}\) ‘Peijs: hoofddoek geeft vrouwen juist vrijheid’, \textit{NRC Handelsblad} (March 20, 2006).

\(^{325}\) TK 20 (November 7, 2001). See also written questions TK 1652 (April 13, 2001), TK 19 (November 6,2001).

\(^{326}\) TK 59 (March 17, 2004): 3888. The ‘Gooi’ is a neighborhood where many high society people live, often ridiculed at for a certain posh accent they are supposed to have.
equally allowed to express their religion. Atheism should not be prioritised as a state religion”. In vain, the Greens cited the (existing) possibility of ‘wraking’ (objection) in case citizens did not trust the independence of the clerk, which means that they can demand the court to replace personnel in a certain case. But a parliamentary majority ranging from the SP and the PvdA to the Confessional parties to the Liberal and Populist Right considered it one bridge too far to also accommodate headscarves in the police force and the judiciary.

2. Social cohesion and public order frames
The Dutch debate about hijabs not only focused on the meanings and practices of public neutrality and religious freedom. The debate about the Islamic face veil introduced another frame that problematised hijabs as symbols of segregation that fragmented the nation in separate groups, as well as of a radical Islam at odds with Dutch culture. It was used by members of the PVV, VVD and the CDA to argue in favour of a ban on face veils in public. Like the Fortuynists before, Geert Wilders (PVV) politicised the burqa through a Political Islam frame, emphasising gender equality as a core Dutch value instead of secularism. This was clearly a more successful angle to frame the problem of a value clash. According to Wilders, Islam was a political ideology that conflicted with a Christian Jewish ‘Dutch Leitkultur’ into which migrants needed to assimilate. This Dutch culture was marked by the equal rights and freedoms of women and homosexuals. According to Wilders, Dutch multiculturalism had fostered an Islamic fundamentalism in parallel societies where women and sexual minorities were deprived of equal rights: “Multiculturalism is the purest apartheid!”

Also the LPF had referred to the rights of ‘minorities within minorities’ when it pled for a ban on headscarves and other religious symbols in public functions (Eisenberg & Spinner-Halev, 2005). In 2005, it had argued: “What would a homosexual think if he would be confronted with a public servant wearing a headscarf? Doesn’t the Minister agree that this undermines the neutrality of the state?”.

Without confirming the idea that the burqa stood for a Political Islam, the conservative Liberals did frame face veils as symbols of segregation and clashing civilizations. Minister of Integration, Rita Verdonk (VVD), explained in 2006 why she favoured a full ban on burqas: “We, in the Netherlands want to live in a free society, where everyone can look each other in their eyes, where people can meet each other and communicate with each other in the public sphere. […] The English Prime Minister Tony

327 TK 50 (February 22, 2005): 3248. Interestingly, the Greens find themselves in a discursive alliance with the Christian Orthodox party SGP. From the same postmodernist critique on hegemonic secularism, SGP members Kees van der Staa ij and Johan van Berkum have recently argued in the daily Volkskrant for the abolition of the Equal Treatment Committee. They argued that the state may not impose its liberal egalitarianism upon other groups by demanding that civil servants marry homosexuals or that religious schools must accept homosexual teachers. See ‘Bestrijd het monster van de gelijkheid’, Volkskrant (February 21, 2005).
328 TK 29754, no. 53 (October 10, 2005): 17.
329 See also open letter of Fortuynists Eerdman and van der Brink: ‘de neutrale staat is een grondrecht’, Volkskrant (February 21, 2005).
Blair characterised the burqa last week as a ‘marker of separation’, a symbol of diversification or of two different worldviews, while we are seeking in our integration policy for binding factors in our society and for social cohesion”. Nonetheless, in the UK debate, both majority and minority communities were called upon to make efforts to mutual understanding, the former by having an open mind to new religions and cultures, the latter by removing face veils in certain situations. In the Dutch debate, the emphasis lay on immigrants having to ‘integrate more’ by adopting Dutch norms and values, while majorities were not addressed (see for this point: Verhaar, 2006).

Not seeing someone’s face was seen as triggering feelings of unease among the (majority) population, subsequently undermining ‘shared citizenship’. The majority of Parliament considered it necessary that women showed their faces in public. “In public life”, Wim van de Camp (CDA) argued, “I want to see people’s faces”. When the new centre-Left Government (CDA, CU and PvdA) took office in 2007, the terms of the debate shifted from ‘shared’ citizenship to ‘active’ citizenship. In its letter to Parliament in 2008, the Government argued ‘face covers form a barrier to active citizenship and social integration’, because ‘open communication is essential for a smooth social interaction between people in society. Mutual acceptance of differences and commonality only emerges when people are unimpeded to get to know each other and to interact. The Government therefore considers this type of clothing undesirable and will, where needed, discourage it.’ It also explained that the Dutch feel uncomfortable by the face veil, because they link it to fundamentalist streams of Islam and female oppression.

Hence, rather than calling upon Dutch majorities to revise their prejudices, the Government appealed on (immigrant) citizens to integrate more ‘actively’ by removing face veils when meeting other citizens in public institutions. Here the Government clearly departed from its policy stance towards headscarves, which had been elaborated in the 2003 policy report on Constitutional Rights in pluriform society. The Report had valued the principle of tolerance as “the willingness to accept the choices and behaviour of others that take place within the boundaries of the Dutch law, even if these are considered incomprehensible”. Moreover, while the government had then still argued that religious signs could not be forbidden because others considered them ostentatious, it now seemed to argue the opposite by obliging women to remove face covers because the majority finds them compelling.

The Commission Vermeulen (2006), which had been established to study the legal and social consequences of a full ban on burqas, recognised the problem of face veils

332 TK 15 (October 19, 2006): 1116.
333 On 17 October 2006, then-Prime Minister Tony Blair said that face veils are ‘a marker of separation and that is why it makes other people from outside the community feel uncomfortable.’ Although he defended women’s individual rights to wear it, he considered a public debate necessary: ‘Blair’s concerns over face veils’, BBC News Online (October 17, 2006). Blair responded to an open letter of Jack Straw, a former Minister of Foreign Affairs of the United Kingdom, published in the newspaper Guardian two weeks before. In contrast to the Dutch, he objected a ban and instead had called upon face veiled women to sometimes remove face veils in personal contact, in light of interethnic contacts. ‘I felt uneasy talking to someone I couldn’t see’, the Guardian (October 6, 2006).
335 TK 31 200 VII, no. 48 (February 8, 2008).
336 TK 29614, no. 2, 1-6-2004 ‘Grondrechten in een pluriforme samenleving’ (June 1, 2004): § 3.2.
triggering feelings of unease. It argued that concealing someone’s face can be interpreted as a lack of mutual respect and creates a power imbalance between two communication partners, which can feel intimidating and even offending.\footnote{A research of social psychologist Agneta Fischer of the University of Amsterdam, however, gave evidence that face-to-face veiling does not necessarily impede interpersonal communication. As long as her eyes were visible, others could still understand her feelings and message: ‘Contact gestoord’, \textit{Volkskrant} (February 16, 2008).} It therefore concluded that face veiling touches upon third persons’ right to a discrimination-free (labour) environment (Vermeulen, 2006: 45). But it challenged the prognosis that a full ban on burqas would contribute to social cohesion, arguing that such a law could be perceived as stigmatic by (moderate parts of) the Muslim community, which would subsequently turn their backs on Dutch society. Moreover, the Chair of the Commission, Hans Vermeulen, argued that feelings of unease, even though understandable, could never be grounds for a ban.\footnote{‘Niet verbieden wat je niet bevalt; gezichtssluiers.’ \textit{Trouw} (November 21, 2006).}

Another diagnosis that emerged on the agenda when the debate shifted to face veiling was that of public security. This frame argues that when people conceal their face in public, they cannot be identified, which leads to possible security concerns. The terrorist attacks in Madrid (March 2004) and London (July 2005), and the murder of film director Theo van Gogh by Mohammad Bouyeri (November 2, 2004) have contributed to the saliency of this frame which represented the burqa as a security problem. Geert Wilders used it in his motion to ban the burqa in a debate about Islamic radicalism, successfully drawing a link between face covers and Islamic terrorism.

The VVD, CDA and SGP supported his motion to ban burqas in public space for security and public order reasons, because of the problem of recognising and identifying face veiled women. MP Weekers of the VVD compared the face cover to other non-religious forms of face covers like balaclavas which seemed to broaden the scope of the debate debate, although the target clearly remained the Islamic face cover: “when people cover their face in public, whether this is with a burqa or with a balaclava, this seriously affects other people’s feelings of safety, and the care for a civil public order involves that we do not tolerate such face covers” (TK 15, 19-10-2006, 1073). While the Government was scrutinising possibilities for bans in specific contexts, Henk Kamp of the VVD launched a law proposal to ban all types of face covers in public space, and Geert Wilders and Sietze Fritsma of the PVV specifically proposed prohibiting the burqa.\footnote{TK 31108, no. 1-4 ‘Voorstel van de leden Wilders en Fritsma tot wijziging van het Wetboek van Strafrecht in verband met een verbod op het dragen van boerka’s of nikaabs in de openbare ruimte (boerkaverbod)’, (July 12, 2007). TK 31331, no. 2-3, ‘Voorstel van de het lid Kamp tot wijziging van de Wet op de identificatieplicht en het Wetboek van Strafrecht in verband met een verbod op het dragen van gezichtsbedekkende kleding in het openbaar en in voor het publiek openstaande gebouwen (January 24, 2008).} The VVD argued that face veiling forms a security threat both objectively (people are unrecognisable for camera surveillance) and subjectively (other people feel uncomfortable and threatened). The PVV added that burqas created real safety problems because terrorists could hide underneath them, giving several examples like that of a terrorist suspect of the bombings in the United Kingdom who had tried to escape in a burqa in Juli 2005.

Parliament sent the latter’s proposal to the Council of State for legal advice which, unlike the French Constitutional Court, argued that the burqa did not cause such a serious threat to public security that it could legitimise a full ban in all domains. Doing so would
also contravene national and international religious freedom rights and equality principles. The legal Commission Vermeulen (2006) had also argued that there already existed sufficient means for local authorities to prohibit in certain circumstance dress that made people unrecognisable for cameras. Only in domains where safety concerns were particularly high, such as public transportation, were prohibitions of all types of face covers considered reasonable. The Minister of Transportation subsequently announced discussions with public transportation services to encourage them to prohibit face covers for users and staff. They would later declare not to see any need for such legislation.

Public security remained an important argument in banning all types of face veils in educational establishments. According to the centre-Left Government of CDA, PvdA and CU, the necessity to guarantee safety in schools via identification legitimised the prohibition on face covers for both pupils and visitors. In addition to public order in the sense of security, also public order arguments in a wider sense shaped policy responses when the face veil was framed as an affront to values of shared citizenship that had to be taught in public schools. Interestingly, safety and security remained a ‘right-wing’ theme, as it was not taken up by the Left that, however, did emphasize –together with the confessional parties –public order in the sense of social and national cohesion. If one wanted to belong to the Dutch nation, a minimal fundament of reciprocity could be expected from citizens.

3. Gender equality and women’s emancipation frames
Female deputies of the Green Party, often themselves from ethnic minority backgrounds, had problematised prohibitions of headscarves for teachers, nurses or public servants from a discrimination and participation frame, arguing that bans hindered the emancipation of migrant women and their equal opportunities and rights to participation. A ban would only augment their isolation and maintain existing traditional gender roles among migrants which these women challenged by embarking upon careers in Dutch society. Hence, underlying their plea for accommodation was the idea that some migrant girls and women wore the headscarf to combine the restrictive requirements of home with their desire to participate in modern Dutch society (since they ‘already found themselves between two cultures’ and could then function as role models for their community). According to the Green Party, the state needed to enable women’s own strategies of emancipation by removing obstacles to participation in the public sphere and help them ‘integrate’. In this light, Deputy Sing Varma (GL) submitted a motion in 1998, accepted by the majority of Parliament, to combat discrimination and Islamophobia in order to increase the integration of migrant women in Dutch society. She also successfully asked the Minister of Integration, Roger van Boxtel, to create internship positions for headscarf-wearing women, and called for positive action measures to increase minorities’ numbers in representative functions and advisory bodies.

With the rise of the LPF in 2003 and the entrance of Ayaan Hirsi Ali on the political stage, the diagnosis of oppression became visible in the Dutch debate about

340 Raad van State W 03.07.0219/II (September 2, 2007).
343 TK 59 (March 17, 2004): 3887.
veiling. Even though Hirsi Ali never politicised the headscarf in Dutch Parliament where she agitated against issues like female genital cutting and forced marriages, she spoke out elsewhere against veiling, which she perceived as a symbol of women’s submission to Islam. Hirsi Ali favoured a ban on headscarves for pupils to lift them from fundamentalist patriarchal pressure, but was more ambivalent about a ban on headscarves in public functions.\[^{345}\] Recently, even Femke Halsema of the Green Party came out in favour of schools’ right to create clothing rules in order to lift pressure on girls to cover, saying ‘a girl of ten years old does not have a free choice’.\[^{346}\] Nonetheless, whereas the French debate centred on the limited autonomy of children to cover, in the Netherlands the debate mostly focused on adult women’s position within Muslim migrant communities. An MP of the Liberal Democrat party D66, Bert Bakker, was convinced that ‘as soon as they will feel safe enough to emancipate, many allochtonous women (i.e. non-Western migrants) will remove their headscarves. Those who claim to freely cover only have a small range of options to choose off, regarding the small margins of some cultures and religions.’\[^{347}\]

The diagnosis of oppression did not result in a call for a ban on pupils’ or teachers’ headscarves to liberate them from possible patriarchal pressure. In contrast, the policy report of 2003-2004 of the Balkenende II Cabinet (CDA, VVD, D66) framed a ban on headscarves as a form of gender discrimination, jeopardising women’s equal chances of participation. It stated that due to its multiple meanings (of religious conviction, identity, pride and emancipation), the headscarf cannot be reduced to a symbol of patriarchy. Although the report recognises that some women could feel pressured to cover, it insisted that a general ban only renders gender-inequality invisible and infringes upon the principle of individual choice that the Dutch state values: “In cases of force or pressure of others to conform to religious duties, we must be alert. The freedom of choice and right to self-determination that women in Holland conquered holds equally applicable for them (i.e. Muslim women). Exactly because of that reason, a general ban on such cloths conflicts with this conquered freedom. It results in an inequality before the law in regard to religion and sex, which has consequences in many other realms, such as labourmarket participation and education. Also women with headscarves have the right to unlimited participation in Dutch society.”\[^{348}\]

The Government thus presented Dutch women as having achieved gender equality, framing individual autonomy as a core Dutch value that conflicted with a ban on headscarves. Instead of a ban, in 2004 Minister of Integration Verdonk suggested to launch talks with immigrant communities to discuss ‘Dutch’ norms of gender equality and liberty, in order to prevent forced veiling, domestic violence, honour killings, arranged marriages


\[^{346}\] ‘Ik ben voor de duvel niet bang. Interview’ (‘I am not scared even for the devil’), \textit{Volkskrant magazine} (May 15, 2010).

\[^{347}\] TK 29 203, no. 9 (March 29, 2004): 7-8.

and girls’ lack of sexual self-determination. The Christian orthodox party SGP was the only party to object to the Government’s plans. According to SGP foreman Bas van Vliet Muslim, women found themselves in an oppressive Islamic community, in contrast to Christian women. Yet, he considered it undesirable that the Government presented liberal norms of sexuality as exemplary for migrants, arguing, “of course there exist many allochtonous women who find themselves in a complicated situation and don’t have a free choice within their community. We should help them by means of several projects, of which good examples exist. But we are in a grey area. We need to realise this. And act with prudence. After all, also the wearing of belly-showing t-shirts, to name something controversial, is not a free choice but the result of peer pressure and thus implicit community force. From a moral point of view, one could thus well argue that the Government should also discuss this type of clothing with autochthonous girls.” In other words, without challenging the diagnosis of oppression, the SGP objected to the prognosis that the state should emancipate women according to a secular gender model marked by liberal sexual values. It rejected the states’ control of women’s sexuality, replacing it with another gender ideology that emphasises female modesty and women’s motherhood roles.

When the debate shifted to face veils, however, the idea that women needed to be liberated through restrictive legislation did find legitimacy. When in 2005 Geert Wilders of the PVV submitted a motion to ban the burqa in public space, (male) deputies of the Right agreed that the burqa and niqab were symbols of women’s oppression that should be prohibited, locating the problem in a misogynous Islamic culture. Both Conservative Liberal and populist right-wing deputies argued that “the burqa is a symbol of submission. This does not fit into our value-system” (Frans Weekers, VVD) or it is “the worst kind of women-unfriendly clothing” (Joost Eerdmans, former-LPF). Also when Wilders and Fritsma (PVV) launched a law proposal of 2007 to ban burqas and niqabs in public space, it was partly motivated by the reason that face veils were symbols of women oppression that hindered women’s emancipation.

The left-wing parties Groen Links, SP, PvdA and the Liberal Democrat Party D66 did not agree with the idea of a general ban on burqas as a solution to fostering gender equality. Instead of legislation, the Left rather chose to ‘emancipate the burqa away’ by stimulating women’s (labourmarket) participation. Moreover, even though the problem of oppression was recognised, a ban continued to be seen as conflicting with the individual choice and self-determination of women. This does not mean that the Left was not wary of gender inequality within migrant communities. Members of the Social Democrats had

350 The SGP forbids female party members to take on executive positions for religiously inspired reasons about the roles of women and men. The state had to quit subsidizing the party after women’s groups won a court process that this contravenes principles in internationally ratified treaties such as CEDAW (see Chapter 3 on state-church practices in the Netherlands).
351 See interview with Bas van der Vlies: ‘Wij gaan opgewekt door het leven’, Volkskrant magazine (November 26, 2005). Also the leader of the governing Christian orthodox party CU, Rouvoet, said in an interview in the newspaper NRC Handelsblad of June 27, 2009 that the position of women is one of the main differences between Islam and Christianity
352 TK 92 (August 31, 2004).
354 TK 31108, no. 3 (July 17, 2007).
355 Deputy Koşer Kaya of the D66: “My fraction does not want to pull off the burqa but emancipate it away”. TK 16 (October 24, 2006).
already warned in 2000 against too much accommodation of ‘other value systems’ under the pretext of religious freedom, such as female genital mutilation, honour killings, and the face veil.\footnote{TK 25919, no. 3, pp. 1-5 (June 13, 2000).} Also in 2008, MP Kranenveldt-van der Veen (PvdA) argued that “members of the PvdA would like to live in an open and emancipated society. Burqas and niqabs don’t fit in such a society. But there is also such a thing as individual freedom in that same society, which grants the right to everyone to wear what she deems right or desires”.\footnote{TK 31 700 VII (December 25, 2008).} In 2008, the leader of the Green Party, Femke Halsema, also stated that she was worried about orthodox streams of Islam forcing women into submissive gender roles like veiling. She hoped that one day “women would throw off their headscarves and be completely free.” Nonetheless, she also said that she would always defend women’s individual choice to wear a headscarf and her equal rights and opportunities to participate.\footnote{‘Ik raak niet verwoest door verlies. Interview’ (I am not broken because of loss’), De Pers (September 8, 2009). See also a response on her weblog: http://www.femkehalsema.nl/2009/09/12/vrijheid-van-geloof-en-van-hoofddoek/ (Retrieved September 15, 2010).}

The Christian Union Party was the only remaining party to seriously challenge the diagnosis that face veils indicated a lack of emancipation. Former Minister of Family Affairs André Rouvoet (CU) argued in a debate on the Government’s new proposal to ban face covers in schools that the state could not act as a ‘theologian’ by concluding that all women who cover are oppressed and needed to be liberated.\footnote{TK 31200 VIII, no. 67 (June 4, 2008). The parliamentary commission of Interior Affairs, of Justice, of Integration, of Education and of Health, welfare and sport met with those Ministers.} Hence, the CU challenged the normative parameter of gender equality and sexual liberty as a shared value. It argued that the state should not evaluate the content of a woman’s choice, who may also desire to submit herself to religiously inspired gender different roles of female modesty as an act of piety and a dictate of their faith (Fernando, 2010; Mahmood, 2005; Vakulenko, 2007). The Commission Vermeulen (2006), which had been installed to study the burqa ban in 2006, had likewise pointed out how a ban to liberate women from an oppression that they did not perceive as such could be seen as a form of paternalism that ‘did not fit liberal democratic principles’ and, moreover, did not help tackling gender inequality. Moreover, the Commission members questioned whether a full ban on face veils would contribute to women’s integration and emancipation, because they possibly enabled women to partake in social life. The Commission (2006: 20; 45-46) did, however, acknowledge that face veils form a hindrance for women’s social and labourmarket participation by impeding face-to-face communication. And it rejected the advice of the ETC to search for female social workers or public officers when face veiled women refused to uncover in front of the opposite sex. It pointed at the sex-segregation that may result from policies that institutionalize the right to demand sex—specific treatment (‘equal but different’). Also the Council of State, which reviewed the 2007 law proposal of the PVV for a full ban on burqas and niqabs in public space\footnote{TK 31108, no. 1-4 ‘Voorstel van de leden Wilders en Fritsma tot wijziging van het Wetboek van Strafrecht in verband met een verbod op het dragen van boerka’s of nikaabs in de openbare ruimte (boerkaverbod)’, (July 12, 2007). TK 31331, no. 2-3, ‘Voorstel van de het lid Kamp tot wijziging van de Wet op de identificatieplicht en het Wetboek van Strafrecht in verband met een}, argued that a full ban would possibly augment the social isolation of women rather than contribute to emancipation and integration.\footnote{TK 31108, no. 1-4 ‘Voorstel van de leden Wilders en Fritsma tot wijziging van het Wetboek van Strafrecht in verband met een verbod op het dragen van boerka’s of nikaabs in de openbare ruimte (boerkaverbod)’, (July 12, 2007). TK 31331, no. 2-3, ‘Voorstel van de het lid Kamp tot wijziging van de Wet op de identificatieplicht en het Wetboek van Strafrecht in verband met een}
Minister of Interior Guusje ter Horst (PvdA) conceded with this view that it was not reasonable to expect that a full ban on burqas in public space improved women’s position. Nonetheless, she considered a partial ban in schools desirable, because face veils obstruct women’s equal opportunities to participation, one of the ‘essential values of Dutch society and our democratic constitutional state’ that needs to be communicated to pupils. The Minister of Education Ronald Plasterk (PvdA), also responsible for women’s emancipation, explained in a discussion with the Parliamentary Commission of Education in December 2008 that, “the burqa and niqab are pieces of trunk. They are women-unfriendly and hinder integration. We all agree upon that.”

Moreover, in its letter to Parliament in February 2008, the Government explained that it was not discriminatory if employers requested women remove face veils, if this was in the interests of the firm or for public safety reasons. Women on social welfare would lose their benefits if they refuse to uncover for a job. This was largely the result of the Right reacting to a local affair, where a face veiled woman had won her case in court for being discriminated against when she was refused social welfare, after being unable to find work. The PVV asked the Government ‘why Dutch judges prioritized the Sharia over Dutch norms and values’. It submitted a motion to deprive niqab-wearing women of social welfare, which was followed by another motion of Nicolaï and Spekman of the VVD to restrict benefits. The latter’s motion was accepted with a general vote on 26th June 2007. In fact, one of the (three) principal reasons for the Conservative Liberal party VVD to vote for Wilders’ initial motion in 2005 to ban the burqa in public space was that face veils hinder inter-personal communication and contact in public life, and subsequently form an obstacle to women’s social and labourmarket participation.

8.4 Analysis and conclusion

Cleavages

Headscarves have so far not become a contentious issue in the Dutch political arena. Both Liberal and Christian (orthodox) parties framed the headscarf as a religious right which in

verbod op het dragen van gezichtsbedekkende kleding in het openbaar en in voor het publiek openstaande gebouwen (January 24, 2008).

361 Raad van State, Wo3.07.0219/II (September 21, 2007).


363 TK 31 200 VII, no. 48 (February 8, 2008): 2.


365 TK 31 200 VII, no. 48 (February 8, 2008).

366 The municipality of Diemen cut a woman off on social welfare when she could not be employed by the state’s employment agency due to her face veil (a form of ‘culpable unemployment’). The court declared the decision illegitimate. The judge reasoned that the state agency had discriminated her on grounds of religion by not sufficiently attempting to find her an alternative job, where her face veil did not constitute a hindrance for her work: BA6917, Court of Amsterdam, AWB 07/1635 WWB (May 24, 2007).

367 TK 31 200 VII, no. 38 (29th November 2007). See also written question TK 2137 (June 14, 2007).

368 TK 30545, no. 25, ‘Uitkering Wet Werk en Bijstand’ (June 20, 2007).

369 MP Frans Weekers (VVD) argued: “You cannot communicate with someone whose facial expressions you cannot see. You do not dare to ask those people anything, because you do not know who is hiding behind a face cover. No employer will hire a job-applicant with a burqa”: TK 15 (October 19, 2006): 1073.
principle fell beyond the regulatory scope of the state, except for certain public functions. The pacification over religion in education may explain why it proved fruitless to call for a secularised public school to liberate girls from religious peer pressure. School education was (and is) supposed to link not with the state, but with the first socialisation milieu - the family. The state could therefore not deprive Muslim parents of the right to educate their children according to their religious beliefs and impose its secular liberal values (Lettinga & Saharso, 2009). The pacification of religious cleavages can explain this low contingency of headscarves.

However, hijabs did become contentious when the debate shifted to face veils, which was largely framed in terms of social cohesion and public order, and secondary in terms of gender equality. Muslim women were required to ‘integrate’ more by removing face veils in public, as well as to emancipate by breaking with Islamic norms of female modesty and become sexually liberated like the Dutch. Deputies deliberated the extent to which the state should and could draw boundaries to the accommodation of Islam, and what norms bind the citizenry. The saliency of the face veil points at a culturalisation of a national identity that was long imagined as pluralistic and civic rather than ethnic.

In contrast to my expectations, this gendering of the nation also turned gender into a rather contested issue, which in turn re-politicised a religious cleavage. Orthodox Muslim minorities were framed as outsiders who first have to ‘integrate’ into a contested majority culture marked by sexual liberalism before they are seen as full citizens like ‘autochthonous’ Dutch. This gendering of the debate on face veils triggered the mobilisation of conservative Christian parties, which feared the intrusion of the secular liberal state into hitherto ‘private’ domains of the family and religious schools.

In other words, historical cleavages regarding religion start to become salient again due to the culturalisation of Dutch nationality in gendered terms. So far, however, secular liberals and confessionals still seem to be hesitant to challenge the status quo in the educational realm, which may explain the low contentiousness of pupils’ and teachers’ headscarves compared to the French debate.

State-church patterns
We have seen how headscarves were largely accommodated in public schools and that Islamic private schools have the right to conform to its orthodoxy by requiring pupils and teachers to wear headscarves. Similar to what Fetzer & Soper (2005) or Monsma & Soper (2009) have found, secularism was seen as just one of the worldviews that citizens can hold. In line with Dutch state-church traditions as a principled pluralism of religious and other worldviews, religious minorities had an equal right to express their religious affiliations in public school. Muslims also had an equal associational right to establish private schools based on pedagogy, on grounds of their particular religious beliefs. This policy was formulated in line with previous educational laws like Article 23 of the Dutch Constitution regulating public and private education. Although this was slightly contested by left-wing parties who objected to the right of religious schools to discriminate on grounds of religion and sex, they never mobilised sufficient support to change these institutional patterns.

While Dutch pillarised notions of equal accommodation was hardly contested in the realm of education, the bans on religious dress in certain authoritative functions like the police and judiciary can not be explained as a path-dependent, lock in effect of institutional
traditions of pillarisation. Deputies successfully argued that such state officials had to hide personal affiliations to maintain the neutrality of the state. Several non-governmental actors have also rejected the accommodation of headscarves in the judiciary in public media, for instance the professors of law Paul Cliteur\textsuperscript{370} and Herman Philipse,\textsuperscript{371} or the legal scholars and publicists Afshan Ellian\textsuperscript{372} and Sylvian Ephimenco\textsuperscript{373} (Saharso & Lettinga, 2009). Public opinion was also shifting.\textsuperscript{374} The principle of (financial) separation between state and church, that has occurred with the constitutional reform of 1983 (van Bijsterveld, 2005), clearly obstructed frames that called for special, state-funded headscarves for police officers. Only the Green Party still pleaded in favour of an interpretation of neutrality as even-handed accommodation of all religious symbols, together with the Dutch Equal Treatment Committee and few legal scholars.\textsuperscript{375} State-church relations thus varied from one domain to another, with non-institutionalised principles of a strict separation, rather than even-handed accommodation, shaping the headscarf debate in public domains like the police and courts.

Moreover, the context-specific bans on the face veil in the educational realm depart from previous policy regarding religion in the educational realm in two fundamental ways. First, while the 2003 clothing directive left it up to schools to decide upon face veils, the Government now intends to oblige both public and private religious schools to prohibit face veils. This restricts the educational freedom that private Christian orthodox schools have historically enjoyed in deciding pedagogic and didactic policies for themselves. Second, the law will also forbid parents and other visitors of schools to wear face veils. By contrast, the ETC argued that schools cannot require parents to remove face veils. It even advised schools to find other solutions to communicate with mothers of children who refuse to remove face covers in front of the opposite sex, for instance by asking a female member of its staff to talk to them.\textsuperscript{376} There was hardly any mobilisation against the pending law, perhaps because it does not challenge the vested interests of Christian

\textsuperscript{370}Cliteur, P.B., ‘Hoofddoekje past niet bij neutrale rechter’ \textit{NRC Handelsblad} (June 30, 2001).
\textsuperscript{371}Philipse, H., ‘Pleidooi voor een nieuwe schoolstrijd. Hoe om te gaan met een half miljoen radicale moslims in Nederland?’, \textit{NRC Handelsblad} (December 18, 2003).
\textsuperscript{372}‘Ik wil links weer op het rechte pad krijgen; Rechtsfilosoof en publicist Afshin Ellian langs de Feministische Meetlat’, \textit{Opzij} (September 1, 2006).
\textsuperscript{373}‘Weg met de hoofddoek’, \textit{Trouw} (February 21, 2004).
\textsuperscript{374}Public opinion on the issue was also shifting. In 2003, a majority of Dutch respondents in a survey had said to tolerate religious symbols for civil servants, but two years later 58% of the 433 respondents wanted headscarves to be forbidden in all public functions. Of the Dutch alderman, however, only 12% considered it undesirable if their colleagues would express their religion by wearing headscarves (TNO Nipo, 2005). Governors thus seemed to be more tolerant than Dutch citizens.
\textsuperscript{376}ETC 2004-95 (July 23, 2004). But in another case the Commission argued that a kindergarten had not discriminated the woman in question by asking her to remove face veil in a playgroup for toddlers. Its goals to communicate skills and knowledge that sometimes required non-verbal communication were deemed legitimate and a prohibition on face covers proportional to those aims: ETC 2009-36 (May 6, 2009).
churches and organisations. In contrast to Islamic school organisations, their associational freedom to organise schools on ground of their denominational beliefs is not at stake.

Muslim religious organisations were, moreover, divided about face veils. The Union of Moroccan Mosque Organisations (UMMO)\(^{377}\) and the Turkish Milli Görüs, for instance, defended the religious freedom rights of pupils and teachers to wear headscarves, but supported the Government’s plan to prohibit face covers in public schools. Both Islamic organisations were invited to policy debates by the Commission Blok, together with other Muslim associations.\(^{378}\) In short, in line with my expectations, Dutch state-church patterns provided several opportunities to claim recognition for religious practices as the headscarf and for religious actors to be involved in policy debates. Yet, some new boundaries to religious freedom could be drawn that were not the result of lock-in effects of previous policy decisions, rather of new meaning given to institutional patterns.

*Citizenship and migrant integration policies*

Changing Dutch citizenship and integration policy legacies can explain why deputies initially managed to frame a ban on teachers’ and civil servants’ headscarves as discriminatory and hindering integration, but later found support for a ban on burqas to foster shared citizenship. When the first debates about teachers’ headscarves flared up in the late 1990s, the Netherlands had been recognised as a defacto multicultural society. The Green party managed to frame a ban on headscarves as an obstacle for migrant women’s participation in Dutch society, from where emancipation was deemed to follow. This emphasis on integration as a two-way direction fit the policy paradigm of the then Purple governments.

The Dutch Equal Treatment Law functioned as an important institutional venue for headscarf-wearing women who faced discrimination in the labourmarket. The ETC clearly advocated a multicultural stance by encouraging employees and the state to create space for diversity, framing even neutrally formulated laws as disproportionally hindering the equal opportunities of practicing Muslim minorities. In later verdicts the ETC also ruled that headscarf bans indirectly discriminate on grounds of sex, hence treating it as an intersectional equality claim.\(^{379}\)

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\(^{378}\) The following Muslim organisations were invited to testify to the Commission Bok: Milli Görüs (‘Stichting Milli Görüs’), Islam and Citizenshi (‘Islam en Burgerschap’), Union of Maroccan Mosques (‘Unie Marokkaanse Moskeeën’), Foundation Islamic Organisations (‘Stichting Platform Islamitische Organisaties’), Dutch Muslim Broadcast Association (‘Nederlandse Moslim Omroep’, NMO), and Dutch Islamic Council (‘Nederlands Islamitische Raad’, NIR).

\(^{379}\) This is mainly the result of applicants basing their complaints on the grounds of sex, because the Commission can only rule over the grounds that applicants feel discriminated upon: ETC 2004-165 (December 20, 2004). ETC: 2004-164 (December 20, 2004); ETC: 2009-103 (November 5, 2009); ETC 2010-78 (May 25, 2010). The commission recognises that a general ban on all religious symbolism can also have consequences for Jewish and Sikh men who wear kippahs or...
also functioned as institutionalised allies for headscarf-wearing girls and women, helping them bring their case forward to the ETC and criticising, in vain, the right of Christian schools to discriminate against Muslims on grounds of religion. In contrast to French organisations, they univocally supported the accommodation of headscarves in public schools.\textsuperscript{380} Education ministers agreed that the religious and cultural pluralism of Dutch society should be reflected in the educational realm. The French idea that a ban on ‘symbols of difference’ would contribute to social cohesion and inter-ethnic peace did not even appear.

Nonetheless, we have seen how deputies increasingly contested the jurisprudence of the ETC, which resulted in boundaries to multicultural accommodation. Although there were no institutional constraints, the Government did not accommodate police officers’ and court clerks’ headscarves, but was in favour of a difference-blind concept of equality requiring all citizens to privatise their faith in such public functions. In contrast to the ETC, it did not discuss the indirect discriminatory effects of such strict neutrality duty for practicing Muslim women to embark upon careers in high state functions. It clearly rejected a visibly pluralist police force, which had to stand above, rather than reflect, the diversity of Dutch society in order to sustain social peace. Later, the Government even endorsed the right of employers to discriminate against face veiled women, and initiated a law to prohibit face veils in public and private schools for conflicting with ‘shared’ and later ‘active’ Dutch citizenship. A visibly pluralist society was clearly no longer a policy aim. In line with the shift observed in Dutch citizenship and integration policies towards assimilationism, conforming to certain Dutch values and norms and actively participating in the labour market became a precondition for full citizenship.

There was surprisingly little extra-parliamentary mobilisation against the increasing restrictive demands placed upon Muslim minorities in the Netherlands. Higher-educated headscarf-wearing women organised meetings and actions drawing attention to the obstacles they faced in the labour market.\textsuperscript{381} Despite the existence of ethnic minority councils, neither hijab-wearing women’s new organisations nor established migrant minority associations were invited to policy debates. Lacking institutional venues, young Muslim women sought allies outside the political arena, such among as anti-discrimination offices and trade-unions to problematise the discrimination they faced.\textsuperscript{382} As we have seen however, trade-unions appeared ambivalent allies. Police officer unions successfully


\textsuperscript{381} On international women’s day 2006, the Foundation ‘Unveiled’ wrote an online petition to claim space for their own strategies of emancipation. It started awarding employers who hired girls with headscarves and publicly discrediting others: \url{http://www.ontsluiert.nl/} (Retrieved September 18, 2010); another initiative came from a group called ‘Top Headscarves’ that wanted to put ‘ambitious, lively, emancipated women’ in a better daylight, but it seized to exist.

\textsuperscript{382} On 21 May 2009, a group of young highly educated Muslim women, called ‘the headscarf brigade’, organised a meeting with the representatives of anti-discrimination organisations, FNV trade union and the municipality of Amsterdam to draw attention to the discrimination they faced in the labour market. They came together in the new gender-mixed ‘Polder Mosque’ to sign a covenant called ‘Fair Opportunities’ (‘Eerlijke Kansen’).
lobbied authorities to create regulations for a strict neutral appearance for police personnel that excluded headscarves.

In short, multicultural policies had initially coincided with state-church patterns of evenhanded accommodation of different worldviews in the educational realm, with the result that headscarves were easily accommodated in this domain. When a shift occurred in immigrant integration patterns to a liberal-egalitarian and later assimilationist citizenship (Scholten, 2008), opportunities emerged for actors to push for restrictions on religious dress. This also changed patterns and logics of state-church relations.

**Gender machinery and women’s emancipation policies**

In line with Dutch women’s emancipation policies that have long institutionalised women’s gender different roles as mothers and caretakers, choosing for gender different ways of managing the body was initially not considered problematic, as long as it was women’s choice. In contrast, the Government’s policy report of 2004 framed prohibitions of headscarves as gender discrimination by hindering women’s equal access in the labourmarket, viewing women’s self-determination as a core Dutch value that obstructed any bans. Femocrats within the Green Party managed to draw attention to the obstacles that hijab-wearing women faced in their emancipation struggles, when they framed prohibitions of headscarves as a hindrance to migrant women’s labourmarket participation and independence.

In line with the shift observed in Dutch emancipation policy paradigms, which increasingly focus on Muslim culture as the principal obstacle to migrant women’s emancipation, face veils were framed as symbols of Islamic oppression which was juxtaposed with an ostensibly gender-egalitarian Dutch culture. This fits the Government’s tendency to differentiate between an unemancipated ‘migrant minority’ and nearly emancipated native Dutch ‘majority’ women (Roggeband & Verloo, 2007). Even though the Government continued to emphasize labour market participation as a goal – instead of a means to gaining autonomy and structural gender equality - it simultaneously created obstacles to women’s participation by initiating context-specific bans to ‘emancipate’ migrant women. A paradox subsequently occurred that face veiled women were seen as oppressed by their religious culture yet increasingly made self-responsible for their emancipation.

In contrast to France, this gendering of the debate was not a result of a greater involvement of women’s movements in policy debates. In line with the decay of the Dutch gender-equality machinery, women’s organisations have had no access to policy debates. Neither feminist critics of the hijab nor opponents of restrictions were invited to any policy debate. Furthermore, only scant feminist opposition to the headscarf existed. The platform for black, migrant and refugee women Tiye International, as well as the Dutch Women’s Council (NVR) never addressed the issue of headscarves, which they generally perceive to be a woman’s choice. Editors of the feminist monthly *Opzij*, in contrast, agitated against

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383 Sandra Boes of the NVR stated in a personal email correspondence that the council considers wearing female Islamic head and body covering is an individual’s democratic right that can only be curtailed for reasons of public safety It thus seems to endorse the government’s position towards the face veil (September 10, 2007). Also Tiye International argued that difference is a blessing and that Muslim women learn to mobilise to claim that right (September 4, 2007).
the headscarf as a sign of female oppression.\footnote{Opzij was established by second wave feminists, and predominantly focuses on issues like equal pay/equal share, discrimination at the labour market, child-care arrangements, and domestic violence. Only since the late 1990s has it started paying attention to minority women, predominantly as victims of patriarchal communities. In 2008, a new chief editor Magriet van der Linden replaced former chief editor Ciska Dresselhuys. She is more receptive for Muslim women’s own strategies of emancipation and even hired an editor wearing a headscarf as a columnist.} They compared women’s choice to veil with a slave’s voluntarily submission to serfdom, drawing attention to unequal gender power-relations within Islamic culture.\footnote{Opzij editor Jolande Withuis advocated a ban on headscarves in pharmacies or for public school teachers already in 1996 for as symbols of women’s (sexual) submission to men. Withuis, J., ‘De huisarts en de assistente’, column Opzij (May 1, 1996); Withuis, J. ‘Onverdeeld naar de Openbare School’ (November 1, 1998). She has fiercely criticized the jurisprudence of the Equal Treatment Committee, arguing that it was illustrative of a “sneaky racism” that allowed “a Holland full of headscarves, veils and yet even chadors, where homosexual teaches have to hide their way of life and their loves and where doctors waste time and knowledge healing hymens.”: Withuis, J., ‘Liberaal?’, Opzij (February 1, 2003). Withuis, J., ‘Handjeklap met seksisme’, Opzij (January 1, 2007).} Chief Editor Ciska Dresselhuys declared on International Women’s Day in March 2001 that she would never hire editors who wore headscarves because it would tap into female oppressive religious doctrines. Nonetheless, Dresselhuys objected to the French law of 2003 because it would further isolate Muslim girls who are in need of civic education.\footnote{Dresselhuys, C. ‘Van die dingen dus’, Opzij (April 1, 2001).} Even with regard to the face veil, the gendered nature of which was more disputed among feminists\footnote{See for instance: Kraus, S. (2003), ‘Verbod niqab laat vraag onbeantwoord’, Volkskrant (March 24).}, Dutch feminists never mobilised for a restrictive legislation.

When Hirsi Ali entered Dutch Parliament, Opzij feminists gained procedural (not substantive) access to gender policy debates. Ayaan communicated their critique that pillarised traditions of religious accommodation were detrimental for women’s rights by giving leeway to Islamic fundamentalists.\footnote{Both Ayaan Hirsi Ali and the Dutch-Egyptian Nahed Selim received Opzij’s award ‘Harriet Freezerring’ in 2004 and 2005, which is attributed to women who have contributed much to women’s emancipation. Selim, N., ‘Ik eis rechten van Moslimvrouwen op!’, Trouw (February 26, 2005). Selim, N., ‘Maar de Sharia wordt intussen volop toegepast’ NRC Handelsblad (July 8, 2009).} As we have seen, however, Ayaan never politicised headscarves in Parliament. Instead, male deputies of populist and liberal right-wing parties gendered the debate on face veils, juxtaposing the oppression of Muslim women with an ostensibly Dutch egalitarian culture, which legitimised restrictive measures that do not in themselves tackle cultural, economic and institutional gender inequality.

Remarkably absent from the political debates were the targets of state policies - the Muslim migrant women who had to be emancipated. Not a single migrant women’s association was consulted in policy debates. In line with dominant governing strategies of gender, migrant women were thus approached as agents of change and as educators of their communities but not as equal discussion partners (Roggeband & Verloo, 2007). As we have seen in France, this seems to contribute to an increasing organisation and mobilisation.
of veiled women who objected to (pending) proposals to ban hijabs, calling for more space to determine their own feminist project within an Islamic framework, with their own strategies of emancipation.390

Their claim for self-determination and individual choice to wear Islamic head and body covering nonetheless resonated among second wave feminists, both within and outside the state. Some feminist scholars391 and left-wing femocrats publicly responded by defending hijab-wearing women’s own choice and space for emancipation within religious frameworks.392 State-Secretary responsible for emancipation, Jet Bussemaker (PvdA), answered for instance in a reply to members of the PVV in 2008 that the burqini (a bathing suit that covers the legs, arms and hair of women) is not necessarily female oppressive and can even enable women to partake in public life and to gain independence.393 We have also seen how feminist expertise within legal bodies as the Commission Vermeulen pointed at the negative effects of bans for the emancipation of women. With the decay of the Dutch gender machinery, such femocrats have nonetheless had only a limited influence on actual policy decisions, forced to forge compromises with Ministers holding more weighty portfolios.

**General political opportunity structures**

Institutional structures can explain why, despite the increasing radicalisation of policy debates, headscarf policies have largely remained accommodationist. The necessity to form coalition governments and the constant shift in governments since the turn of the century decreased their capacity to act. We have seen how the need to forge consensus between

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390 In January 2004 two hundred people, predominantly Muslim women, demonstrated against the French ban on headscarves, using the slogan ‘boss over one’s own head’. This refers to the slogan ‘boss over one’s own belly’ of the Dutch second wave movement ‘Dolle Mina’ to claim women’s self-determination in regard to abortion. ‘Demonstratie tegen Frans hoofddoekverbod’, Volkskrant (January 26, 2004). See also Frank, R.: ‘Gezichtssluier’, NRC Handelsblad (January 10, 2003). In December 2006, a group of headscarf and niqab-wearing women went demonstrating in The Hague and offered a petition against the burqa ban to the Social Democrat party. ‘Moslima’s betogen voor recht op Boerka’, Volkskrant (November 25, 2006); ‘Boerka draagsters in actie tegen verbod’, Reformatorisch Dagblad (December 1, 2006). In November 2006, Dutch (converted) Muslim women launched an Islamic Manifesto to encourage Muslim women’s emancipation while retaining ties to their religion.


393 TK 1938 (April 11, 2008). In 2008 a local swimming pool in Zwolle forbade women to wear the burkini outside the special swimming hours it had arranged for ‘allochtonous’ citizens. After consultation of the local alderman for sports, the swimming pool withdrew its regulation: De Stentor (February 28, 2008). See also TK 2156 (April 10, 2008). PVV members Agema, Wilders and Fritsma asked the Minister: “If the burkini is meant for Muslim women to swim in a modest way, does this mean that all people swimming in a bathing suit or bikini are immodest?”
coalition partners led to slow and incremental processes of policymaking regarding the face veil (Duyvendak & Koopmans, 1992). Moreover, the Council of State and other legal expertise bodies such as the ETC and the Commission Vermeulen renounced policy proposals that directly discriminated against Muslims. Depending on the Government’s will to follow the jurisprudence of the ETC and the Council of State, these bodies have functioned as institutional obstacles to pass legislation that conflicted with constitutional and international human rights principles. Nonetheless, we observed an increasing discrepancy between the accommodative jurisprudence of the Equal Treatment and the will of the legislature to prohibit headscarves in certain public institutions and the Islamic face veil all together.

Power constellations
The shift in framing and policy responses can largely be explained by the entrance of far-Right parties that problematised face covers as symbol of a radical Islam in conflict with Dutch values of gender equality and gay rights. Established parties responded to this challenge of the populist Right. The ruling parties VVD and the CDA adopted some elements of its discourse, framing face veils as problems for social cohesion and public security, and hindering to migrant women’s participation in Dutch society. Also Social Democrats, Socialists and smaller Christian parties discussed the face veil as problematic for social cohesion and integration. The populist Right successfully blamed Social Democrats for having supported multicultural policies that had contributed to a radicalisation and disintegration of Islamic migrant communities, even though this party actually participated in the Purple cabinet that abandoned the multicultural policy paradigm in the 1990s. Nonetheless, the PvdA did respond to the challenge of the Right by adopting some elements of the Right’s discourse that ‘we’ as a nation no longer tolerate excessive cultural differences of ‘them’, and came out in favour of a law that would ban face veils in certain domains. The PvdA leader and Vice President of the Cabinet, Wouter Bos, explained why in an interview in 2008: “I find it important that the Cabinet clearly speaks out: the burqa is undesirable and will be forbidden for reasons of public order. Of course I know that there are in the Netherlands only 150 cases, but what matters is to lay down the norm” (Lettinga & Saharso, 2009).

Alliance structures also shifted during the policy process. In contrast to what was expected from Christian parties, the CDA and the SGP favoured legislation prohibiting religious symbols for police officers, as well as legislation obliging private religious schools to prohibit the wearing of face veils for reasons of public safety and social cohesion. They joined the secular Liberals and Liberal Democrats in a plea for a strict secularism. In contrast to what was expected from pro-immigrant left-wing parties, the Social Democrats and the Socialist Party came out in favour of a ban on face veils, albeit only in certain domains. In addition to social cohesion, the Left considered such a ban legitimate in order to foster Muslim women’s participation and emancipation. They joined the conservative Liberals and CDA in an emphasis on a shared national identity that required more cultural integration of Muslim immigrants. Finally, parties not known for feminist agendas were now using gender equality arguments to reassert a national identity that was gendered in monoculturalist terms, such as the populist Right. Only the Green

394 Peeperkorn, M. & Sommer, M (2008), ‘Minister van Financiën is een baan, het partijleiderschap een roeping’, Volkskrant (March 1, 2008).
Party responded to the instrumentalisation of the LPF of women’s and gays’ rights for their own anti-immigrant aims. Also the conservative Liberal party VVD became a protagonist of gender equality concerns and an ally for egalitarian feminists like Dresselhuys, even though its neoliberal market agenda helped dismantle the gender machinery of the 1990s, affecting negatively the resources of women’s for their claims of gender justice.

To conclude, Dutch cleavages and institutionalised policy pasts regarding religious, gender and ethnic differences have clearly shaped policy-formation processes for the hijab. Dutch state-church and antidiscrimination frameworks provided opportunities to frame the accommodation of headscarves in terms of equal rights, religious freedom, and social recognition. Changes in Dutch immigrant integration policies created new opportunities for actors to push for frames that focused on the burqa as a sign of ethnic and religious otherness. New right-wing political parties seized opportunities provided by new immigrant integration policies to frame the recognition of Islam as a threat to the gender egalitarian nation, and the hijab as a sign of failing integration. Opportunities were also created by international and national events like Islamic radicalism in the polder. This framing (re)politicalised cleavages that were deemed pacified. Due to the intersection of cleavages new alliance structures emerged that provided opportunities for opponents of multiculturalism. Nonetheless, despite the radicalisation of the debate, only minor changes occurred in Dutch headscarf policies, which have so far remained largely accommodationist. Legal constraints, backed by the court and by some parties in coalition governments, halted the passing of laws that directly discriminate and exclude certain categories of citizens. Institutional patterns, particularly of state-church relations in the educational domain, thus appeared harder to change than discourse.

395 TK 59 (March 17, 2004): 3887. Naima Azough (GL) draws here a parallel between the LPF and lord Cromer, a British consul in Egypt in the early 20th century who objected to women’s suffrage at home while advocating the unveiling of Muslim women to increase their freedom and equal rights. She argued that the use of gender in a clash of civilisation discourse would only be counterproductive, in politicising group identities and jeopardising women’s chances to criticise patriarchal pressure in communities.

9.1 Introduction
This chapter analyses the political debate on the hijab in four federal states (‘Länder’) - Schleswig-Holstein, Rhineland-Palatinate, Baden-Württemberg and Berlin – selected because of the different outcomes of their policy debates. While the former two states are paradigmatic examples of continued tolerance of teachers’ headscarves, the latter two exemplify states that have introduced legislation that either forbids the display of all religious and political symbolism by public school teachers and civil servants (Berlin) or that prohibits only symbols in conflict with ‘Christian-occidental’ values and traditions, meaning the teacher’s headscarf (Baden-Württemberg) (see table 7). This begs the question of how we can account for such regional differences in German headscarf policies. In this chapter, it will become particularly clear that even though national institutions and policy legacies have shaped parliamentary and legal debates on the hijab, political actors can interpret these differently, and even circumvent institutional constraints through the ways they frame issues. Through the political process, including the framing contest between different state-actors, institutional patterns were affirmed, renegotiated and changed. Regional differences in the constellation of power in parliament, as well as in policy legacies of immigrant integration, state-church relations, and gender equality, can explain the different ways in which the hijab issue was deliberated in federal states’ parliaments. This resulted in contradictory outcomes within one national policy, a fact that challenges the heuristic validity of ‘national models’ of state-church and citizenship.

This chapter starts with an analysis of the timeline, the saliency and the actors involved in the politicisation of the hijab, elaborating upon the policy responses that have resulted from the frame competition between actors in the four states of Baden-Württemberg, Berlin, Schleswig-Holstein and Rhineland-Palatinate. A particularity of Germany is that legislators strongly referred to the rulings of the Federal Administrative Court (FAC) and Federal Constitutional Court (FCC) when deliberating the issue. For, even though Länder have a substantial autonomy in certain policy fields, such as education, their policies must still conform to national constitutional law. In this light, I will first elaborate upon the jurisprudence of the Constitutional Court on the famous ‘Ludin’ case, before discussing the framing of the parliamentary debates on the hijab in the four Länder. In the Ludin case, the Court ruled that the federal legislatures have the authority to prohibit religious signs for public school teachers, but that they must introduce adequate, non-discriminatory legislation. Paradoxically, this verdict contributed to the further politicisation of the issue and resulted in several restrictive laws, mostly in former-West-German states. After I have elaborated upon the framing contest in the judiciary and the parliament, I will conclude this chapter by addressing the extent to which historical cleavages, policy legacies of state-church relations, immigrant incorporation and gender equality, and party constellations can explain the politicisation of the hijab in Germany.
9.2 Debates and policy responses

Figure 6 Political contentiousness of hijab in Germany (1997-2007)

9.2.1 Time line and saliency

Figure 6 illustrates the amount of parliamentary debates (both plenary and within designated parliamentary commissions), motions, law proposals and written and oral questions found concerning the hijab in the four federal states between 1997 and 2007. The figure shows that the hijab only became a salient topic after the ruling of the Federal Constitutional Court in 2003. A quick scan through the databases of the other federal parliaments also reveals that hijabs were not yet much politicised before 2003. One conflict over teachers’ headscarves emerged in the federal state of Lower Saxony in 2000 and one in Baden-Württemberg in 1997/8, upon which I will elaborate below.

The German debate has primarily focused on a teachers’ right to wear a headscarf. In Berlin and Hesse the debate has also extended to other public service functions, resulting in restrictive bans. Pupils’ headscarves have never been contentious. When, in

[396] In Germany, deputies can put issues on the agenda by submitting a motion (‘Antrag’) (if it is supported by at least five members of their faction) or by writing questions to the government, either individually or as a faction (respectively ‘kleine’ or ‘grosse Anfrage’). Deputies can also raise questions during a weekly question hour. Motions can be rejected, adopted, answered, or sent to one of the parliamentary commissions for further scrutiny, whereas questions can be put on the agenda for a plenary debate (‘Plenarprotokol’) before they are sent to a parliamentary commission. Finally, deputies may submit law proposals, which are plenary discussed in two rounds before they are adopted or rejected. Law proposals can also be introduced by the government or per referendum.
1998, the right-wing party Die Republikaner in Baden-Württemberg submitted a motion to ban headscarves for both teachers and pupils, the Government argued such a ban to be disproportional, as pupils have the right to express their religion in public schools. This right has not been challenged in Germany, and in cases when school directors expelled pupils with headscarves, authorities corrected them.

So far, the hijab has hardly been politicised in Eastern German states. This low saliency in Eastern Germany can partly be explained by the different state-church legacies and immigration histories of the BRD and GDR, with the former recruiting migrant workers from Islamic countries such as Turkey, and the latter recruiting immigrants from non-Muslim, Communist-allied countries. Only in Berlin are there a significant number of Muslim immigrants. Here, and in Brandenburg, politicians did launch policy proposals to ban religious dress for public servants. Nonetheless, the visibility of headscarf-wearing teachers is in itself no sufficient explanation for the political contentiousness of the issue. The Central Council for Muslims (‘Zentralrat der Muslime’) in Germany estimated that before 2003, 40 teachers had worn a headscarf, primarily in the federal state of North Rhine-Westphalia. No conflict with any parents and pupils had emerged. In other words, the hijab controversy in Germany did not start as a response to local conflicts but was politically manufactured, particularly after the Federal Constitutional Court ruled that legislatures were allowed to create regulations to prevent potential conflicts in the future.

Recently politicians have politicised the Islamic face cover. Some deputies in the Federal Parliament asked for a full ban on the Islamic face cover in public, referring to the legislation in the Netherlands, Belgium and France. Lale Akgün of the SPD fraction, for instance, argued in January 2010 in the daily ‘Frankfurter Rundschau’ that face covers should be forbidden in schools, universities and public places like banks and airports, stating that “the burqa is a full body prison, which deeply contravenes human rights. It would be an important sign to ban the burqa in Germany”. Her party, however, objected to legislation, with the SPD expert on interior affairs Dieter Wiefelspütz arguing that soft measures would be a better way to develop an ‘Enlightenment Islam’. The Greens also objected, labelling such laws as symbolic politics that do not target real problems. The FDP and CDU argued that a ban on headscarves was already sufficient grounds to expel pupils with face veils. In some federal states, politicians have already stated that this type of religious dress can be forbidden in public schools for reasons of public safety, communication and interests of pedagogy. So far, no legislation has been proposed.

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398 Some school directors in North Rhine-Westphalia have used the new school-law that was introduced in 2004 to expel pupils with headscarves, e.g. in Düsseldorf, Salzgitter and in Dortmund. The Ministry of Education of Lower Saxony publically declared in 2008 that the neutrality clause in the new school-law did not cover pupils but only school teachers. Also in the federal states of Saarland and Baden-Württemberg, cases are known where directors sent pupils away because of their headscarf. See: Bernd Dicks, “Wie Rektoren das Kopftuchverbot ausweiten wollen”, der Spiegel Online (October 16, 2008).

399 ‘Akgün fordert Burka-Verbot’, online at Süddeutsche.de (January 28, 2010).

400 One case occurred in 2006, when two pupils at a public secondary school in Bonn, North Rhine-Westphalia, started wearing face veils against the wishes of their parents. They were dismissed for two weeks, after which an agreement was reached between the school and the two girls’ laywer,
The analysis of German hijab debates will therefore primarily focus on teachers’ headscarves. In total, there were twenty-two documents for Baden-Württemberg (seven motions, five law proposals, seven plenary debates and two in commissions). Twenty documents were found for Berlin (seven questions, four motions, one law proposal, five plenary parliamentary debates and four debates within parliamentary commissions). The issue received scant attention in Rhineland-Palatinate (ten in total: four questions, one motion, two plenary and two parliamentary commission debates) and even less in Schleswig-Holstein (four in total: one motion, two plenary and one parliamentary commission debate).

9.2.2 Actors

Figure 7 makes clear that the CDU has been a particularly important player in putting the teacher headscarf on the agenda. Before 2003, the right-wing party Die Republikaner initiated the debate in Baden-Württemberg, calling for a prohibition on teachers’ headscarves. But after the ruling of the Federal Constitutional Court in 2003, Die Republikaner was no longer represented in the parliaments of the Länder. The CDU took over the initiative, launching 7 of the 11 law proposals in Germany’s 16 federal parliaments to change school laws, either as government party (e.g. with the SPD in Saarland) or as parliamentary faction. These all specifically addressed Muslim women’s headscarves by making Judeo-Christian religious and cultural expressions exempt. One law proposal aimed at prohibiting only the headscarf was submitted by the right-wing party that they would no longer cover their faces in school. One girl left the school: ‘Streit über verhüllte Schülerinnen beigelegt’, Frankfurter Allgemeine (May 10, 2006).
German People’s Union DVU.\textsuperscript{401} It was rejected by the CDU, SDP and PDS/die Linke. The populist right-wing party Law and Order Offensive Party in Hamburg (PRO), which ruled at that time with the CDU and FDP in a coalition government, submitted a neutrally formulated law proposal in 2004.\textsuperscript{402} But the coalition partners did not agree upon the need for regulations, neither did the SPD and PDS factions in parliament support this law proposal. The then-spokesperson of the Government, Alexander Luckow, declared in 2003 that the headscarf constituted no problem ‘for a global and growing city as Hamburg’, especially because there had not been any complaints of pupils, parents or teachers.\textsuperscript{403}

Left-wing parties have also played a role in the politicisation of the issue in Germany. On the one hand, deputies of the Bündnis 90/Die Grünen or PDS/Die Linke raised few questions before 2003 about the discrimination that headscarf-wearing women faced when participating in the labour market. Moreover, the Greens in Baden-Württemberg in vain submitted law proposals to allow headscarves for public school teachers or kindergarten governesses. On the other hand, the Left submitted several motions or law proposals aimed at banning headscarves for teachers. As a government party, the SPD introduced a neutrally-formulated ban in the city states Bremen (with the CDU) and Berlin (with PDS/Die Linke).

9.2.3 Policy responses of Länder governments

The first political debate about the hijab in Germany occurred in the South-Western Land of Baden-Württemberg in 1997. Compared to the national average of 19.2%, Baden-Württemberg has high numbers of inhabitants with immigrant backgrounds - in 2008, 25.5% of its 10 million inhabitants came from a migration background, 11 % being foreign nationals.\textsuperscript{404} Baden-Württemberg is religiously divided in two Christian denominations: 35 % belong to one of the two Protestant churches and 39 % are Roman-Catholic. Approximately 5.7 % are Muslim and 0.2 % Jewish.\textsuperscript{405}

\textsuperscript{401} Brandenburg 3/6487 ‘Gesetzentwurf zur Änderung des Beamengesetzes für das Land Brandenburg’ (October 15, 2003), followed by a parliamentary debate: Brandenburg 3/84 (November 5, 2003).

\textsuperscript{402} Hamburg 17/4150 ‘Gesetz zur Änderung des Hamburgischen Schulgesetz’ (January 28, 2004), followed by a parliamentary debate: Hb 17/55 (February 12, 2004).

\textsuperscript{403} ‘Kopftuchurteil spaltet die Hamburger Regierung’, \textit{Die Welt} (September 25, 2003). In addition to the multicultural standing of the city government, parties may also have been motivated to reject the proposal to isolate the right wing populist party PRO (Henkes & Kneip, 2009). PRO had entered a coalition government with the CDU and the FDP, after it had won 19.4 % of the vote in the 2001 elections. This cabinet fell prematurely in 2004 after a political controversy, when party leader Ronald Schill was expelled from the party and removed from office as Senator of Interior. In the 2005 elections it participated under a new name, Offensive D, but this party could not enter Parliament with 0.4 % of votes.

\textsuperscript{404} All percentage of immigrants are retrieved from the Länder’s statistical offices that are based on the 2006 census of the Federal Statistical Office of Germany (‘(Microzensus 2006, Statistisches Bundesamt Deutschland’). ‘Immigrants’ include both people who are born abroad and have migrated to Germany and people who are born in Germany but whose parents have a migration background, irregardless of nationality.

The case that triggered policy debates concerned Fereshta Ludin, a woman of Afghani descent, daughter of a diplomat, who had spent most of her life in Saudi Arabia and Germany and had received German citizenship in 1995. She was a teacher-trainee at a middle school (‘Hauptschule’) where she had long worn a headscarf without any complaint from parents. When she finished her traineeship and applied for a placement as a teacher in a public elementary school in Stuttgart in July 1998, she was rejected by the Upper School Authority of the city district. The Authority argued that Ludin lacked the personal qualifications (‘Eignung’) for the status of civil servant, even though she had successfully finished her education to teach German, English and social studies. It supported its decision with the reasoning that the headscarf not only conflicted with the principle of state neutrality, but was also a political symbol of ‘cultural limitation’. Young schoolchildren were easily influenced and could thus be negatively impacted. Moreover, because it could provoke strong reactions of rejection, the headscarf also had to be considered a danger to the pedagogical climate of the school (Altinordu, 2004). All parties in parliament agreed with the decision of Minister of Education of Baden-Württember Anette Schavan that Ludin’s dismissal had been legitimate. With financial support from the Islamic organisation Milli Görüs, Ludin embarked upon a legal battle against the federal state to win her right to teach in public schools while wearing a headscarf. After three years of legal battles in different courts, her case was eventually heard by Federal Constitutional Court in 2003, which ruled her dismissal for the function of public school teacher as unconstitutional, and yet simultaneously allowed federal states to introduce legislation to prohibit religious expressions (see below).

After 2003, the legislatures in half of (Western) Germany’s states enacted laws banning public school teachers from wearing religious symbols and clothing in school (Baden-Württemberg, Berlin, Bremen, Bavaria, Lower Saxony, North Rhine-Westphalia, Hesse and Saarland). Even though the laws do not explicitly mention the Muslim headscarf, the debates illustrate that laws were clearly intended to target this religious dress only. In two states, the ban was extended to other public servants who exercised governmental functions in the field of justice, police and law-enforcement (Berlin and Hesse). Because judges are not civil servants (‘Beamte’) in a strict sense of the definition, the laws of Berlin and Hesse do officially not apply to judges. But so far, not a single judge has operated wearing a headscarf (Berghahn, 2008). In Baden-Württemberg and Berlin, legislation exists for kindergarten personnel also, who are not civil servants but do have a pedagogic function.

All states’ laws exclude teachers of Islamic religious courses in public schools. All, except Bremen, also allow for exemptions for teacher-trainees wearing headscarves, because prohibitions would infringe too disproportionally upon citizens’ freedom to choose their profession. Because the state has the educational monopoly over training teachers, it cannot prohibit trainees to wear headscarves. Then they would be unable to finish their education, hence to work as a teachers in private Islamic schools (of which only few exist

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406 The whole legal procedure was partly paid by the Islamic religious organisation Milli Görüs which is under criminal investigation of the Ministry of Justice and which contributed to public speculation that Ludin was working for fundamentalist groups to undo the German democratic system.
in Germany), or else in public schools in states that still allow the display of religious symbolism.  

Following Rostock & Berghahn (2009), I differentiate between three types of policy regimes that now exist in Germany: the laic model, the Christian-occidental model and the case-to-case model. Fogel (2007) makes a similar distinction between so-called ‘category A laws’ (the Christian-Occidental model) and ‘category B Laws’ (the laicist model), but further differentiates Bremen (that forbid symbols that have an effect on the pupils’ feelings) from Berlin (forbidding all ‘visible’ religious symbols). Table 7 lists the policy responses for all German states.

**Table 7 German policy responses to the hijab**  
*(Based on Rostock & Berghahn (2009); Henkes & Kneip (2009))*

<table>
<thead>
<tr>
<th>Neutrally formulated ban government</th>
<th>Specific ban: exemption for Christian-occidental cultural values and traditions government</th>
<th>Specific ban rejected: context specific approach government</th>
<th>No law proposal introduced: context specific approach</th>
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<td></td>
<td>Saarland (2004) CDU</td>
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* The neutrality law of Hessen concerns both teachers and regular civil servants. The neutrality law of Berlin concerns teachers and civil servants, as well as other public functions in the judiciary and the police.

** These laws make an exemption for teacher-trainees (except the law of Bremen); teacher-trainees may, ‘in principle’, express personal religious affiliations.

*** The law of Baden-Württemberg also forbids the wearing of hijabs for personnel working in kindergartens. The law of Berlin allows this ‘in principle’, until parents complain. Then the rights of parents take precedence over the rights of the kindergarten governesses.

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407 See the ruling of the Federal Administrative Court in 2008: BVerwG 2 C 22.07 (June 26, 2008). The federal judges argued in this case that teacher-trainees could not be forbidden to wear headscarves under the new school laws of Bremen.
Baden-Württemberg was the first state to enact Christian-occidental legislation on 1\textsuperscript{st} April 2004. After a motion of the SPD in October 2003 to respond to the Federal Constitutional Court’s verdict\textsuperscript{408}, the FDP-CDU Government introduced its law project in April 2004\textsuperscript{409}, supported by the FDP, SPD and the CDU.\textsuperscript{410} Only the Greens rejected it and launched, in vain, an alternative proposal that tolerated religious expressions for teachers until a real conflict occurred.\textsuperscript{411} Two years later, on 2\textsuperscript{nd} February 2006, a parliamentary majority consisting of the CDU and FDP voted in favour of a new government law proposal to ban also headscarves for personnel in kindergartens and for social workers specialising in education.\textsuperscript{412}

The law of Baden-Württemberg (BW)\textsuperscript{413} is taken as a paradigmatic example of ‘Christian-occidental’ legislation that was also introduced in Saarland\textsuperscript{414}, Hesse\textsuperscript{415}, Bavaria\textsuperscript{416} and North Rhine-Westphalia\textsuperscript{417} (Rostock & Berghahn, 2009; Henkes & Kneip, 2009; HRW, 2009). These states’ laws do not ban religious symbols for teachers per se, but symbols or clothing that endanger the peace at school or the neutrality of the state, or else conflict with the basic rights of parents and/or pupils, or with the ‘free, democratic order’ (or a combination of these). The laws of Bavaria do not refer to neutrality or school peace

\textsuperscript{408} BW 13/2466 (October 1, 2003).
\textsuperscript{409} BW 13/2793, Gesetz zur Änderung des Schulgesetzes (January 14, 2004), followed by the parliamentary debates: BW 13/62 (February 4, 2004) and BW 13/67 (April 14, 2004).
\textsuperscript{410} BW 13/67 (April 1, 2004). There were three abstentions: Christine Rudolf of the SPD was against the law; Heike Dederer and Thomas Oelmayer of the Greens were in favour.
\textsuperscript{411} BW 13/2837, Gesetz zur Änderung des Schulgesetzes (January 27, 2004).
\textsuperscript{412} Gesetz zur Änderung des Kindergartengesetzes (February 14, 2006). A parliamentary majority adopted the law proposal of the governing parties CDU and FDP/DVP that forbids headscarves for staff in kindergartens and in other care and educational preschools: BW 13/4869 (November 25, 2005). Another SPD proposal was rejected that had allowed headscarves for women who had already been working as kindergarten governesses without any problems: BW 13/4803, Gesetz zur Änderung des Kindergartengesetzes (November 3, 2005). A motion of the Greens to not launch a law project was rejected by the parliamentary commission: BW 13/4658 (September 21, 2006).
\textsuperscript{413} BW 13/3091, Gesetz zur Änderung des Schulgesetzes (April 14, 2004).
\textsuperscript{414} Gesetz zur Änderung des Gesetzes zur Ordnung des Schulwesens im Saarland (Schulordnungsgesetz) (June 23, 2004). The legislator explicitly stated that the regulation is not limited to headscarves, but the educational law mentions that schools should educate pupils according to ‘Christian educational and cultural values’ (HRW, 2009).
\textsuperscript{415} Gesetz zur Sicherung der staatlichen Neutralität (October 18, 2004). The law in Hessen mentions that any ban should reckon with the Christian and humanistic traditions of its state. Hesse also forbids religious expressions for civil servants in other public service functions than those of teachers (namely those who execute governmental functions and enforce law, including judges, prosecutors, police officers, and court and prison officials) (HRW, 2009).
\textsuperscript{416} Gesetz zur Änderung des Bayerischen Schulgesetzes über das Erziehungs- und Unterrichtswesen (November 23, 2004). Bayern defines ‘Christian-occidental educational and cultural values’ as part of the federal state’s constitutional values (HRW, 2009).
\textsuperscript{417} Erstes Gezetz zur Änderung des Schulgesetzes für das Land Nordrein-Westfalen (June 13, 2006). The law of North Rhine-Westphalia is similarly formulated as the one of Baden-Württemberg and mentions that symbols displaying Christian and occidental educational and cultural values or traditions don’t conflict with the states’ educational duties of neutrality (HRW, 2009). Before the elections of May 22, 2005, when an SPD government ruled, the opposition party FDP had still rejected the law proposal of the oppositional CDU faction that exempted Christian symbolism. After the elections, when an FDP-CDU government entered office, it supported the government’s law project that was largely based upon the CDU proposal (Henkes & Kneip, 2009: 265).
as an objective, but only ban public school teachers from wearing dress that conflicts with the constitutional values and/or educational objectives of the state. All five laws have formulated value references or exception clauses stating that the display of ‘Christian-Occidental’ values and traditions corresponds to the educational mandate of the state, or forms part of constitutionally embedded values. The new school act of Baden-Württemberg, for instance, argues that public school teachers are not allowed to exercise political, religious, ideological or similar manifestations that may endanger or disturb the neutrality of the Land towards pupils or parents or the political, religious or ideological peace at school. The act deems as ‘particularly illegitimate’ any ‘behaviour that can appear to pupils or parents to be a teachers’ demonstration against human dignity, gender equality according to Article 3 [of the Basic Law], the rights of freedom or the free and democratic order of the constitution.’ Then the exception clause follows: ‘[t]he respective exhibition of Christian and Western educational and cultural values or traditions does not contradict a (teacher’s) duty of behaviour,’ and corresponds to the educational mission of the state (quoted from HRW (2009): 26).

Although this or any other law does not explicitly mention that headscarves (can appear to) conflict with such (constitutional) Christian and Western values, the effect is that headscarf-wearing teachers have been fired, while nuns are still allowed to teach and crucifixes on public school walls are pretty normal. When the Minister of Integration of North Rhine-Westphalia, Aygül Özkan (CDU), insisted in 2010 upon the removal of crucifixes from public school walls for reasons of state neutrality, she was forced to withdraw her remark by her fellow party members. Also the Federal Officer for Integration, Maria Böhmer (CDU), argued that crucifixes belonged to the German culture and tradition.418

Berlin is taken as a paradigmatic example of the ‘Laic’ legislation. In addition to Berlin419, laic laws were passed in Lower Saxony420 and Bremen.421 Their laws ban all personal expressions of political, religious and philosophical beliefs for reasons of public neutrality (Bremen and Berlin) or of teaching in light of the educational mandate of the state (Lower Saxony), without explicitly mentioning that expressions of a Christian Western value-system are allowed. The educational laws of Bremen and Lower Saxony focus on the effect that the outer appearance of the teacher may have on pupils, whereas the Berlin law strictly prohibits all religious symbols or cloths in public service, regardless of effect. Only the laws of Berlin and Bremen contain a strictly secular interpretation of neutrality. The educational law of Lower Saxony is neutrally formulated by demanding that the ‘outer appearance of school teachers, even if chosen by a teacher due to religious or ideological reasons, may not create any doubts concerning the teachers’ qualification to

418 While the CDU criticised her position, she found support in the FDP, die Linke, Bündnis 90/Die Grünen, as well as from the Turkish Community Germany (‘Türkischen Gemeinde in Deutschland’, TGD). The Central Councils of Muslims (‘Zentralrat der Muslime in Deutschland’, ZMD), in contrast, supported the visibility of all religions in public space: ‘Deutschland: Debatte um Kruzifixe’, Migration and Bevölkerung 5/2010 (May 2010).
419 Gesetz zur Schaffung eines Gesetzes zu Artikel 29 von Berlin und zur Änderung des Kindertagesbetreuungsgesetzes (January 27, 2005).
421 Gesetz zur Änderung des Bremischen Schulgesetzes und des Bremischen Schulverwaltungsgesetzes (June 26, 2005).
convincingly fulfil the educational mandate of the schools’. Article 2 of the school law explains that the state’s educational objective is grounded in Christianity (HRW, 2009: 36). Also the parliamentary debates on the law in Bremen illustrate that the main target was likewise the Islamic headscarf, with both the CDU faction and the SPD Educational Minister stating that the wearing of Christian and Jewish symbols remained possible (Henkes & Kneip, 2009: 259).

The city state of Berlin also has significant numbers of inhabitants with immigrant backgrounds. In 2008, 24 % of the 3.4 million inhabitants had an immigration background, including ethnic German immigrants, Jewish refugees from Eastern Europe and Turkish labour migrants, and their descendants. Berlin is a secular city, with 59 % of the inhabitants not belonging to any church 21.5 % of its inhabitants belong to the Protestant Church, 9.3 % are Catholic, 0.3 % Jewish and 6.3 % Islamic. Here, the hijab was mentioned for the first time in a parliamentary question in January 2003. A member of PDS/Die Linke drew attention to the exclusion of a trainee with a headscarf from functioning as a preschool teacher. But the headscarf only became a political issue nine months later when the CDU submitted a motion in October 2003 asking the Government to ban headscarves in all public service functions. It was followed by a new bill in February 2004 explicitly aimed at exempting Christian symbolism. The FDP also submitted a motion in December 2003 to ban all religious symbolism. Hereafter the Red-Red coalition Government (SPD-PDS/Die Linke, 2002-present) presented its own law project in January 2005. It aimed to reformulate Article 29 on rights to religious freedom of the Berlin Constitution in a more narrow sense. It prohibited all religious, philosophical and political symbolism for public school teachers and social workers specialising in education (‘social pedagogues’), as well as in the realms of justice administration (only civil servants who exercise governmental functions), penal law enforcement (public officers and prison guards) and police.

The law was passed by the PDS/SPD parliamentary majority. The Greens objected to the Government’s proposal, because it also wanted a full ban in kindergartens to prevent religious indoctrination of children. But because kindergartens constitute semi-public domains, the Government argued that the law could not extend to this domain. Instead, it created possibilities for parents in kindergartens to insist on their negative right of freedom of religion with the ombudsmen. The FDP abstained from voting, because it considered the proposal not clear enough. It also wondered whether administrative and supporting

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422 B 15/11218 (January 12, 2003).
423 B 15/2122 (October 22, 2003).
424 B 15/2509 ‘Neu’ (February 5, 2004). This second bill is very different from the first, which was replaced. In the first draft, the headscarf is represented as a religious (fundamentalist) symbol of proselytism, from which young, modern and integrated Muslim girls need to be shielded in public service areas. No references were yet made to its incompatibility with the Christian value culture of German society, as was the case in the second draft.
425 B 15/2300 (December 2, 2003).
428 In paragraph 7, section 5/6 of the Kindertagesbetreuungsgesetz Berlin it is written that personnel must in that case remove religious symbols, because the right of the parents prevails over civil servants’ individual rights. They can be fired or offered another position within the institute that does not involve personal contact with the children.
personnel (like cooks) in the justice administration had to remove religious dress and symbols, even after the Minister of Interior had explained that the law did not apply to staff who are not working as government officials. Some confusion existed about court-clerks. The law forbids the wearing of headscarves by court clerks with contracts under civil law, but not trainee judges. Senator of Justice, Gisela von der Aue (SPD), later explained, in response to a written question from the CDU concerning a court clerk with a headscarf in a Berlin court, that due to the independence of the judiciary, courts have the authority to decide upon the headscarf of court-clerk with no such contract.\footnote{B 16/1149 (November 22, 2007). Here Senator of Justice, Gisela von der Aue, explains in a response to a written question of the CDU that courts have the authority to decide upon the headscarf of a court-clerk, due to the independence of the judiciary.} Several headscarf-wearing trainees have been denied access to some training roles (HRW: 2009: 47). Very recently, a higher Berlin court has also interpreted the new law as impeding the creation of special rooms for Muslim prayers in public schools.\footnote{In 2010, a higher administrative court in Berlin overruled a ruling of a lower court that had allowed Muslim pupils to pray in public schools. It argued that in light of Berlin’s public neutrality, the state could not prioritize pupils’ positive freedom right to religion over the negative religious freedom right of third persons and, furthermore, that prayers disturbed school peace in a religiously pluralist society. ‘No Religion at School. Berlin Court Rules Against Muslim Student Prayers, Spiegel Online (May 27, 2010).} Schleswig-Holstein and Rhineland-Palatinate are taken as paradigmatic examples of the eight states continuing their case-by-case approach in determining whether someone teaches in accordance with their public duties to public neutrality. Here the wearing of headscarves by teachers can be prohibited if there is evidence that they contravened their duty to neutrality or endangered the peace of school. In both states, the numbers of Muslim immigrants is lower than the national average. In 2008, 18.2 % of the 4.1 million inhabitants of Rhineland-Palatinate had a migration background, but only an estimated 100,000 are Muslim (0.25 %). The majority of the population belongs either to the Catholic Church (46.5 % of the population) or the Protestant Church (31.2 %).\footnote{‘Muslime in Deutschland und im Südwesten’. Online at: http://www.swr.de/islam/muslime-in-deutschland/muslime-in-deutschland/-id=7039406/nid=7039406/did=1544486/1my2cyt/index.html (Retrieved November, 11 2010). For Christian religions: Statistik der EKD (December 31, 2004).} Of the 2.8 million inhabitants of the rural Northern Land of Schleswig-Holstein in 2008, the percentage of immigrants was 12.1 %. Schleswig-Holstein also officially recognises national minority groups, like the Danes, Friesians, the Sinti and Roma, whose cultures and languages are constitutionally protected. The majority of the population in Schleswig-Holstein is Protestant. In addition to Rhineland-Palatinate and Schlesig-Holstein, also Hamburg and the Eastern states (where the issue has not yet been politicised) of Mecklenburg-Lower Pomenaria, Saxony, Saxcony-Anhalt and Thuringa belong to this last category in which teacher headscarves are tolerated.

In Rhineland-Palatinate, the first teacher-trainee with a headscarf was accepted in 1999 for her training in a public elementary school in Koblenz.\footnote{Before 2005, only one document was found. It concerned a written question of a member of Bündniss ’90/Die Grünen to ask the then SPD-FDP government for a response about a woman that had been fired by a department store because of her headscarf. It was reported as a form of illegitimate discrimination: RP 13/4977 (November 19, 1999).} Six years later, in 2005,
CDU deputy Christian Baldauf raised questions about this, which was followed by a law proposal of his party to pass legislation to ban teachers’ headscarves in public schools. On 30 November 2005, the proposal was rejected with 55 to 24 votes by the fractions of governing parties SPD and FDP, as well as the oppositional party Bündnis/die Grünen. In 2009, the CDU launched a new law proposal to ban headscarves for school teachers, followed by an amendment of the small FDP faction that asked for a ban on all kinds of religious symbolism. But both were rejected by the governing SPD majority in parliament.

Also in Schleswig-Holstein (SH), the hijab did not trigger much political controversy. The issue was first mentioned in 2002 in the annual report to the Government of the then-Commissioner of Integration, Helmut Frenz, when the city of Kiel forbid a social pedagogue with a headscarf to work in a kindergarten. This issue did not trigger any response from the Red-Green Government. In October 2004, a motion of the CDU to ban headscarves for public school teachers was rejected by the governing parties SPD and Bündnis/die Grünen, as well as by the oppositional parties FDP and SSW. After a cabinet change in 2006, when a Grand Coalition of SPD-CDU took office, the CDU asked for a response about the teacher-trainee who had worn a headscarf at a secondary school in Kiel without any complaints of the school council. The Minister of Education, Erdsiek-Rave (SPD) now argued that the wearing of headscarves was not allowed for public school teachers. But because the two coalition partners CDU and SPD could not agree upon the content of neutrality that had to be included in the new school law in 2007, no legislation was passed and debates calmed down again. The new school law writes in paragraph 4, section 6/7, that, first, public schools have the duty to tolerance and openness to the different worldviews according to which parents want to educate their children and that, secondly, teachers must also observe in their appearance the philosophical and religious neutrality of the state. The Minister of Education explained in its background information to the law that the religious dress, including the wearing of headscarves, will not be prohibited for school teachers and that only concrete cases can reveal whether teachers

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433 RP 14/3074 (April 14, 2004) and RP 14/4496 (September 15, 2005). See also RP 15/15 (June 29, 2006); RP 15/19 (June 22, 2006).
434 RP 14/3855 (February 23, 2005). Its proposal argued that only those symbols were prohibited that others could interpret as conflicting with the Land’s constitutional or educational objectives. It explicitly exempted the display of Christian and western values and traditions.
435 RP 14/103 (November 30, 2005).
436 RP 15/3125 (February 20, 2009) (CDU proposal); RP 15/3125 (November 10, 2009) (motion of FDP to change CDU proposal).
437 RP 15/77 (November 11, 2009). In the 2006 elections, the SPD won 45.6 % of the votes and formed a government by itself. The Greens did not win enough votes to win a seat Parliament.
439 SH 15/3008 (October 3, 2004), including an amendment: SH 15/3792 (November 18, 2004).
441 Schleswig-Holstein Schulgesetz (January 24, 2007).
have not acted in accordance to their duties by disrespecting the religious beliefs of third persons.\textsuperscript{442}

9.3 The ruling of the Federal Constitutional Court and present-day jurisprudence

The decision of the Federal Constitutional Court of 24\textsuperscript{th} September 2003 is characterised by a frame-conflict between a conflict with neutrality frame that prioritises the religious freedom right of pupils over those of teachers, and a religious rights and pluralism frame that values Germany’s tradition of open neutrality. The first frame structured the jurisprudence of the first two local administrative courts in Baden-Württemberg where Ludin appealed to, as well as of the Federal Administrative Court (FAC) in Leipzig (but not that of a local court in Lower Saxony in another case where a teacher had initially won her right to wear a headscarf, see: Karakasoglu, 2002; Henkes & Kneip, 2008).\textsuperscript{443}

The first lower administrative court (in Stuttgart) that Ludin appealed to in 2000 agreed with the decision of the school authority of Baden-Württemberg that Ludin lacked the personal qualifications (‘Eignung’) for the status of civil servant by refusing to remove her headscarf as a public school teacher. According to the court, teachers had to compromise their religion in order to protect the freedom of beliefs of children and the rights of parents to raise them according to their religious beliefs. Moreover, the judges emphasised that both the Federal Constitution and the Constitution of the Land of Baden-Württemberg were based on Christian values. In this light, the court argued, “the expression of religion by teachers who adhere to non-Christian faiths is more restricted than when it concerns teachers who adhere to Christian belief-systems” (quoted from Henkes & Kneip, 2008: 10).\textsuperscript{444} When Ludin appealed to the higher administrative court (in Mannheim) in 2001, it turned down her appeal.\textsuperscript{445}

Hereafter, Ludin appealed to the Federal Administrative Court (FAC) in 2002, but it likewise declared her appeal unsuccessful for reasons of state neutrality.\textsuperscript{446} The judges of the FAC argued that even if Ludin herself did not engage in missionary activities, she could still exert (unintended) influence on young children who are particularly vulnerable

\textsuperscript{443} In 2000, the SPD government of Lower Saxony endorsed the decision of the local school authority to withdraw the placement offer of the concerned Iyman Alzayed for a public elementary school, even though she had been teaching at a private school for several years without any problems. Considering their exemplary function as representatives of the state, teachers had to appear neutral to preserve societal peace and to protect the religious freedom rights of third persons: LS 14/12,‘Unterrichtung über die beamtenrechtliche Eignung Kopftuch tragender muslimischer Bewerberinnen für den Niedersächsischen Schuldienst’ (February 21, 2000). When she filed suit to the administrative courts of Lüneburg court in Lower Saxony, the judges ruled in favor of the woman in question, partly because it could not belief that someone who was raised as a Lutheran Christian would teach values that contradict with the constitution: VG Lüneburg, AZ: 1 A 98/00 (October 16, 2000). After she lost her case in the Higher Administrative Court of Lüneberg, she said she was tired of fighting a legal battle and that she could no longer finance it. She decided to remove her headscarf if this was necessary to get a full-time teaching profession: Leffers, J., ‘Lehrerin Iyman Alzayed ist prozessmüde’, Spiegel Online (June 29, 2004).
\textsuperscript{444} VG Stuttgart, AZ: 15 K 532/99 (March 24, 2000)
\textsuperscript{445} OVG Mannheim, Urt. 4 S 1439/00 (June 26, 2001).
\textsuperscript{446} 'Bundesverwaltungsgericht', BverwGe, 2C 45.03 (June 24, 2004).
to religious indoctrination (Altinordu, 2004). Without differentiating between Christianity and Islam, the judges argued that the right of pupils to be free from undue influence of the personal belief of a teacher outlawed the right of a teacher to display her religion. Also the right of parents to determine the content of education for their children would be infringed by her wearing a headscarf (Mahlmann, 2003: 1102; Fogel, 2007: 633-634).

The Federal Constitutional Court reasoned differently. On 24th September 2003\textsuperscript{447}, it declared that Ludin had been denied placement without sufficient legal grounds and concluded that the School Authority of Baden-Württemberg had violated her constitutional rights, that is, under the existing laws of federal states. Yet, it noticed that federal states were free to create new laws in light of Germany’s changing society that restricted teachers’ rights to express their religion (Fogel, 2007; Saharso, 2007). The Court reaffirmed that the wearing of a headscarf is a fundamental religious freedom right that must be balanced with other constitutional rights, and that nobody may be discriminated against on grounds of religion for a civil service function. In regard to public neutrality, it argued that the state did not necessarily become partial if it allowed teachers to wear headscarves. Germany’s understanding of secularism was an ‘open and comprehensive neutrality’ that allows the state to encourage, protect and sustain religious pluralism, both in society and in school (‘offene und übergreifende Neutralität’) (Henkes & Kneip, 2008: 13).

According to the court, the state merely created space for visible religious difference among its staff when it allowed the wearing of headscarves. It did not identify with a particular religion, as was the case with a crucifix on the wall (see for the crucifix case: chapter 4 on Germany’s state-church relations). Because unlike the crucifix, the teacher’s headscarf simply illustrated the personal allegiance of the woman in question who, furthermore, could mitigate the influence on children by explaining the significance of the headscarf to them. Furthermore, drawing on the research of the sociologist Yasemin Karakaşoğlu\textsuperscript{448}, the judges concluded that the headscarf in itself cannot be reduced to a sign of proselytism or of suppression of women, but can carry many meanings, among them a means to live an autonomous life while remaining attached to one’s own cultural background (Gould, 2008). The court thus concluded that the Civil Service Law of Baden-Württemberg did not contain sufficient provisions to justify a restriction on Ludin’s right to wear a headscarf while teaching. It even argued that federal states could decide to allow headscarves in public schools, “using it as a means to practice reciprocal tolerance, and in this way to contribute towards the efforts being made to promote integration” (§65 of verdict, quoted from Could, 2008: 8).

The Court could did not reach the conclusion from here that teachers have the right to express their personal beliefs. Instead, it acknowledged the ‘abstract’ danger that pupils may be confronted with religious arguments contrary to their will, and that the headscarf subsequently endangers fundamental rights of third persons and educational peace. Even though it had not found empirical evidence that a headscarf-wearing teacher had a

\textsuperscript{447} ‘Bundesverfassungsgericht’, BVerfG 1436/02 (September 24, 2003).

\textsuperscript{448} SH 15/4467 (April 29, 2004). The sociologist Yasemin Karakaşoğlu (2000) had argued in her hearing for the Federal Constitutional Court and in a letter to the Schleswig-Holstein Parliament that second generation migrant girls who don headscarves should be considered as rational, modern and autonomous agents, who reinvent Islam in order to combine her religiosity and Islamic gender roles with work and education.
(negative) influence on children, the court took into account the meaning that the headscarf may have for third persons (‘objektiver Empfängerhorizont’). The judges, who had been internally divided on the case, argued that - unlike the Christian cross, which only has a religious meaning – the headscarf could be interpreted by others as a sign of fundamentalism and women’s oppression. It thus concluded that headscarf-wearing teacher causes a potential danger of conflict with students, parents or other teachers, and that Länder would therefore be entitled to interpret the public duty to neutrality in the educational system in a ‘stricter and more distanced way’ (Altinordu, 2004).

The court explicitly referred to Article 9 of the European Convention for the Protection of Human rights, which stipulates that member-states have a margin of appreciation to decide upon the relation between state and church, when it argued that Länder were allowed to “reckon with the school traditions, confessional composition of the population, and the more or less rootedness of religion”. But whatever option legislators would choose, they had to treat different faiths equally, which contains both “the justification and the practical application of such job requirements” (quoted from Fogel, 2007: 637). In short, the Federal Constitutional Court strongly reaffirmed the principle of religious freedom and freedom of conscience, but also framed the headscarf as a potential source of conflict. This legitimised the passing of new legislation that would prohibit the display of religion by teachers.

On 24th June 2004, after Baden-Württemberg had changed its school law, the Federal Administrative Court came to the conclusion that Ludin’s dismissal (a case still pending) was now legitimate under the state’s new legislation. The abstract danger of religious indoctrination was sufficient grounds to require teachers to compromise their positive right to freedom of religion. Important is that the FAC judges argued that they did not allow exceptions for particular forms of religiously motivated clothing, as the attorney of the state had attempted. According to the judges, the reference to ‘Christian’ values and traditions in the school law of Baden-Württemberg merely meant recognition of a formative cultural value-system of western civilisation, detached from a particular religious connotation. It did not refer to the actual display of an individual religious

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449 This ambivalent judgment is often seen a result of a political compromise in order to win over one of the four dissenting judges who had favored Ludin’s rejection from office (Berghahn, 2008). The three remaining judges declared in their dissenting opinion that according to them, teachers who insisted on wearing headscarves could already be dismissed for the job of a teacher under the current civil service law, because they had to be willing to refrain from wearing symbols that had an outward effect on children, particularly those that conflicted with principles of gender-inequality. While Ludin had argued she felt her personal dignity to be diminished if she had to teach uncovered, the judges concluded from there that this suggests that any woman who does not cover herself renounces her dignity (Gould, 2008:10).

450 The court argued: “The headscarf is –unlike the Christian cross– not a religious symbol of itself. Only in the context of the person that wears it, and of her other conduct can it display a comparable effect. The headscarf worn by Muslims is perceived as a token for highly diverse expressions and ideals: besides the wish to abide by the clothing regulations that are felt to be obligatory and that are established religiously, it can also be construed as a sign of adherence to the traditions of the society of origin. In the most recent period, a political symbol of Islamic fundamentalism is increasingly seen in it, which expresses the restriction of the values of Western society such as individual self-determination and especially the emancipation of women.” (quoted from Altinordu, 2004: 11).
denomination but to values that every public servant should be able to agree with. The spirit of the law in itself therefore did not create an illegal preferential treatment of the Christian religion.\textsuperscript{451}

Hereafter, the Federal Government interfered in the debate. The then-Federal Commissioner for Migration, Refugees and Integration, Marieluise Beck, sent a memo to the legislature of Schleswig-Holstein (and North Rhine-Westphalia) after the ruling of the Federal Administrative Court.\textsuperscript{452} It wrote that if legislation was desired, the court had been clear that all religious symbols needed to be forbidden. According to Beck, the new school law of Baden-Württemberg, as well as the bills that had been presented by Bavaria, Berlin, Hesse, Lower Saxony and Saarland, conflicted with the jurisprudence of the Federal Constitutional Court. The constitutional principle of equal treatment had also been communicated by former Federal Commissioner for Foreigner of Berlin Barbara John in a round table in Rhineland-Palatinate about religious symbolism in public schools. In addition to the jurisprudence of the Federal Constitutional Court, she had referred to the new EU anti-discrimination Directives that Germany has passed to argue that partial laws contravened equality norms (EC/2000/78 en EC/2000/43).\textsuperscript{453} This forced deputies to choose between banning on all religious symbols, or to leave things as they were by allowing the expression of all religions by teachers.

Nonetheless, all attempts have failed to dispute the Christian Occidental legislation that has been implemented in five federal states. The effect is that only headscarf-wearing teachers are fired or not hired for teaching jobs, while nuns are still allowed to teach. Even hijab-wearing teacher-trainees, who are formally excluded from the laws, have experienced difficulties finding traineeship positions in states that have passed such legislation, and have moved to federal states that have not passed legislation, like Hamburg, to finish their education (HRW, 2009: 47). Several teachers or social pedagogues specialising in education brought their cases to court when they were fired or dismissed as applicants in states that had passed such laws. Some of them had, in vain, replaced their headscarves with a bandana\textsuperscript{454} or a pink woollen bonnet\textsuperscript{455} to retain their jobs (HRW, 2009). But local judges concluded that they still displayed their personal religious affiliations to pupils and parents, subsequently forming an abstract danger to public neutrality that legitimised her

\textsuperscript{451} BVerwG, AZ: 2 C 45/03 (June 24, 2004). Hereafter, Ludin decided to work in a private Islamic school in Berlin where she can wear a headscarf.


\textsuperscript{453} SH 15/4470 (April 27, 2004); RP round table (July 11, 2005)

\textsuperscript{454} In their August 2007 verdict, the judges of an administrative court in Lower-Saxony argued that a woman who had been employed for more than ten years was legitimately fired. Even though she tried to conform to the spirit of the new law of Lower Saxony by wearing her headscarf in a ‘modern’ Grace Kelly-style way (and in some cases also removed it), her headscarf still constituted an ‘abstract’ danger to neutrality. Also another 28-year-old woman in Lower-Saxony had replaced her headscarf with a bandana, but to no avail (see Berghahn, 2008).

\textsuperscript{455} A local labour court argued in June 2008 that the bonnet of the social pedagogue in question still ‘made her recognisable’ as a Muslim and thus endangered the negative right of freedom of belief of third persons. This decision was upheld by a higher labour court in Düsseldorf (Berghahn, 2008).
dismissal. Only the wearing of wigs was suggested as an option for Muslim women that could be in line with their duty of neutrality (Berghahn, 2008).

In fact, of all thirteen cases that were brought to court by teachers between 2004 and 2009 to challenge their dismissal, only one local court (in Baden Württemberg) ruled in favour of the woman in question (Henkes & Kneip, 2009: 24). It declared that the expulsion of a Muslim convert for the job of public school teacher comprised a form of discrimination, as long as nuns were still allowed to teach. But this decision was overruled by a higher court, whose judges considered the two nuns ‘historical exceptions’ that did not comprise a systematic discrimination for Islamic religious communities. This line of reasoning was followed by several other courts (Berghahn, 2008).

Two attempts were made at challenging the constitutionality of the Christian-Occidental laws, one by the attorney of the Land of Hesse (the legal feminist scholar Ute Sacksofsky) to the constitutional court of Hesse and another one by the Islamic Religious Community of Berlin to the constitutional court of Bavaria. In 2007, both courts argued that the actual texts of the law conformed with constitutional values, because they merely referred to a Christian value-system rather than a particular religious expression. The courts left it up to specialised (labour or administrative) courts to determine in individual cases whether it was within the scope of the law to continue to tolerate the nuns’ habit in public schools. It suggested that this could be in line with the spirit of the law (Berghahn, 2008; Sacksofsky, 2009).

Because courts have so far legitimised the dismissal of teachers under the new laws, women must again start a new (expensive) legal trajectory, and appeal to the Constitutional Court to conclude on the legality of the new laws. But considering the fact that the FCC considers restrictions of teachers’ freedom rights constitutional if they do not discriminate between religions, the chance exists that states will then reformulate existing laws in neutral terminology. Also Germany’s new Equal Treatment Committee does not offer many opportunities, which cannot sanction federal authorities or file complaints to the court. Moreover, it considers the Berlin law to be in line with Equality legislation. The only institutional opportunity left to dispute headscarf bans therefore lies outside the national arena: the European Court of Justice (ECJ) in Brussels. For this to happen, a national court must first depart from the existing jurisprudence and request a preliminary ruling of the ECJ to conclude whether national regulations are conforming to European Equality Directives (Berghahn, 2011). So far, courts have not expressed any doubts about the regulations of the federal states.

456 The case concerned a converted German woman who had received a letter from the Upper School Authorities of Baden-Württemberg in 2000 that she had to remove her headscarf when she was in contact with pupils (Karakanoglou, 2002: 17). She had worked as a teacher since 1973 and started to wear a headscarf in 1999, without any complaints of parents. Also the school director in Bad Cannstadt did not have problems with her headscarf, reportedly because her ears and neck were still visible and thus “she looked like all other German women”, Süddeutsche Zeitung (March 31, 2000).

457 OVG Mannheim, 4 S516/07 (14th May 2008). This different rulings between the lower and higher court has to do with the former court applying the interpretation of equality as ‘deficit of execution’ (‘Vollzugsdefizit’) and the latter court as ‘no equality in case of injustice’ (‘Keine Gleichheit im Unrecht’). The former means that persons have to be treated equally in similar cases and that one case has consequences for another. The latter means that one can not claim equality on grounds of the jurisprudence of another case and that the two cases do not need to be linked. Both are legally valid applications of Germany’s equal treatment law (Berghahn, 2008).
9.4 Diagnoses and prognoses in the Länder parliamentary debates on the hijab

Seven frames structured the debates in German Parliament. Differences existed in the extent to which these frames resonated, as well as in the prognosis offered to the identified problem. A first Christian Occidental frame identified the headscarf as conflicting with the cultural and educational objectives of the state to teach pupils the values of a secularised Christian, Western culture. It went hand-in-hand with a conflict with neutrality frame that identified headscarves as undermining teachers’ duty to neutrality, and a Political Islam frame that problematised the headscarf as a symbol or tool of an extremist Islamic ideology at odds with German values like religious tolerance and gender equality. While in Baden-Württemberg this Christian Occidental frame representing Germany as a Christian nation resonated and found legitimacy, it was challenged by most parties in Berlin, Schleswig-Holstein and Rhineland-Palatinate. Nonetheless, the conflict with neutrality frame structured the political debate in Berlin, as well as an oppression frame that identified Muslim girls at risk of patriarchal community pressure to veil by fundamentalist peers. In Schleswig-Holstein, the Political Islam and oppression frames also structured the debate, but a religious rights and pluralism frame was visible with deputies arguing that an individual case-by-case assessment was a better means of balancing conflicting religious freedom rights. In Rhineland-Palatinate, deputies clearly wanted to maintain Germany’s open neutrality tradition, using this religious rights and pluralism frame to legitimise the accommodation of teacher’s headscarves. Moreover, they argued from a segregation frame that a ban would only halt the integration process of moderate Muslim immigrants and drive them in the hands of Islamic fundamentalists. A discrimination and participation frame also resonated in Rhineland-Palatinate and Berlin, problematising structural obstacles of discrimination and social-economic discrepancies that hindered the integration and emancipation of headscarf-wearing women.

1. State church frames

In 1997, in the legislature of Baden-Württemberg, Die Republikaner politicised the headscarf from a neutrality and Christian Occidental frame, which was later taken up by the CDU. According to this frame combination, teachers who refuse to remove headscarves are disrespecting the rights of pupils and their parents to religious freedom. Their duty to neutrality requires that teachers moderate their personal beliefs, out of respect for the different beliefs of children and their parents. In the words of CDU member Hermann Seimetz: “Miss Ludin wanted to test our tolerance, instead of showing tolerance herself by paying tribute to our neutral state. For wearing a headscarf is incompatible with the principle of confessional neutrality.”

Nonetheless, not all religious expressions were seen as problematic. By contrast, in their plea for a ban on headscarves in 1997, deputies of the CDU and Die Republikaner referred to Article 16, §1 of the federal state’s constitution, which writes that pupils in Christian interdenominational schools must be raised according to the ‘Christian occidental educational and cultural values’. By choosing to wear headscarves, seen as signs of an

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459 BW: 12/23 (March 20, 1997): 1630. Die Republikaner also referred to article 12, §1, which writes that all children need to be taught ‘in worship of God, in the spirit of Christian love of one’s
intrinsically different value-system, Muslim teachers excluded themselves from public teaching functions. When in February 2004 the then-Minister of Education Anette Schavan of Baden-Württemberg (CDU) presented her Government’s bill to the parliament\textsuperscript{460}, she also emphasised that Christianity was a postulate of German culture on which social cohesion was based: “from us is to be expected that we know and defend the religious roots of our German culture […] and not that we do as if all expressions of our own traditions and related cultures is problematic in a religiously pluralistic society.”\textsuperscript{461} She made clear that symbols that reflected this Christian Western culture, such as crucifixes or nuns’ habits, did not need to be banned. Also Jewish kippahs were sometimes included as expressions of this cultural value system.\textsuperscript{462}

One month later, on 12\textsuperscript{th} March 2004, a public hearing was held on the draft-bill of the FDP/CDU Government, to which were invited several legal experts, representatives of the church and a feminist lawyer of Turkish descent known for her anti-headscarf stance.\textsuperscript{463} Most legal experts, such as former judge of the Federal Constitutional Court Ernst-Wolfgang Böckenforde\textsuperscript{464}, argued that the bill illegally discriminated between religions and conflicted with the jurisprudence of the Federal Constitutional Court. The constitutional judge and attorney of Baden-Württemberg, Ferdinand Kirchhof, argued however that the exemption-clause in the law proposal referred to secularised Christian values, such as brotherly love, that were detached from a particular religious doctrine. The transmission of such values in public schools had been allowed by the Constitutional Court in previous cases. The nun’s robe was, so he pleaded, part of ‘a national identity’ rather than an expression of religious identification and could thus be worn in public schools. In order to make his point, he compared it to the city blazon of Munich that shows a monk in a habit, which likewise merely had a ‘historical value’ (Joppke, 2009). By representing the kippah and the nun’s habit as cultural rather than religious symbols, Baden-Württemberg’s law aimed at only prohibiting the headscarf.

In Baden-Württemberg, the CDU found support from the SPD and the FDP for this policy frame. SPD fraction leader Peter Wintruff argued that: “different from the headscarf, the crucifix belongs to our Western culture, to our tradition and has here a high standing as a religious evidence of brotherly love, tolerance and human dignity […]. We acknowledge the mandate of our federal constitution to educate our children according to fellow men, in fraternity with all humans and in love of peace, in love of the People and Homeland, of moralistic and political responsibility, professional and social reliability and of liberal democratic conviction’

\textsuperscript{460} BW 13/2793 (January 14, 2004).
\textsuperscript{461} BW 13/62 (February 4, 2004).
\textsuperscript{462} See also BW 13/3697 (October 20, 2004).
\textsuperscript{463} The hearing brought together four jurists: Ernst Gottfried Mahrenholz, vice president of the Constitutional Court; Ernst-Wolfgang Böckenforde, judge of the Constitutional court; Ferdinand Kirchhof of the University of Tübingen; Mathias Jestaedt of the University Erlangen Nürnberg. Ferdinand Kirchhof had been involved in the making of the government’s proposal. Also a feminist lawyer of Turkish descent was invited, known for her public stance against headscarves (Seyran Ates), a school director (Rainer Mack) and a representative of the Evangelistic church council of Baden Württemberg (Michael Trensky).
Christian and Western cultural values. The state neutrality in our public schools may – unlike a Laic state – recognise religious expression, but only those that don’t contravene the embedded human rights”.\textsuperscript{465} Even though SPD members wondered whether nuns’ habits could actually be exempted, they voted in favour of the Government’s law proposal.\textsuperscript{466} Also deputy Kleinman of the Liberal party argued: “We prohibit the headscarf and simultaneously affirm symbols that have shaped our Occident.”\textsuperscript{467} Only the Greens disputed that constitution values were embedded in a Christian value-system that visible Muslim teachers could not transmit or that legitimised the discrimination of Islam. Deputy member Kretschmann (Greens) argued: “Your law actually says, in the vocabulary of sports: ‘it is not allowed to play ball sports in the school yard’. But then comes the second phrase: ‘football is not a ball sport’.”\textsuperscript{468}

The CDU faction in Berlin even argued that the unequal treatment of Islam was legitimised because, “in a Christian-moulded society, it cannot be a constitutionally derived duty to treat all religions equally. Privileging of Christian educational and cultural values would generally be acceptable. The conception that religion should be separated from the political realm is not maintainable for the CDU.”\textsuperscript{469} Deputies of the SPD, Greens, PDS and the FDP fiercely objected to the CDU’s proposal to privilege Christianity over other religions. The SPD refuted the idea that Germany’s value-system had evolved from Christianity and was at odds with Islam.\textsuperscript{470} Özcan Mütlu of the Greens argued that the CDU had to give up its ‘Christian-Occidental dream of the nation’.

The PDS/Die Linke and the Greens pointed at the large number of atheists in Berlin to contest the idea that Germany was a Christian country,\textsuperscript{471} and the FDP emphasised the multi-religious character of the city.\textsuperscript{472} Nonetheless, the conflict with neutrality frame resonated in Berlin. Even though no actual conflicts had occurred with teachers being found guilty of proselytising their religion, all parties (except the CDU) argued that the privatisation of all personal religious affiliations by teachers was the best guarantee to safeguard religious freedom rights and religious peace. The faction of PDS/die Linke had initially opted for the toleration of teachers’ headscarves, but the SPD convinced its coalition partner to vote for a law that forbids all political and religious symbols on equal footing, not only for teachers but also for other civil servants. No-one differentiated between teachers (who are in direct contact

\textsuperscript{465} BW 13/62 (February 4, 2004).
\textsuperscript{466} BW 13/67 (April 1, 2004): 4715. SPD member Freider Birzele, for instance, declares here that even though the SPD supports the idea of a ban it is anxious to know whether the Federal Administrative Court considers its current wording constitutionally sound.
\textsuperscript{467} BW 13/67 (April 1, 2004): 4704. In the debates of 1997/8, the FDP had still objected the differentiation between kippahs, crucifixes and headscarves, representing all as religious expressions that deserved an equal recognition.
\textsuperscript{468} BW 13/62 (February 4, 2004): 4408.
\textsuperscript{469} B 15/53 (January 17, 2005): 7. See also CDU deputy Gram in Berlin in: B 15/47, Inhaltsprotokoll Rechtsausschuss (November 18, 2004): 6
\textsuperscript{470} B 15/46, Inhaltsprotokoll Rechtsausschuss (November 18, 2004).
\textsuperscript{472} B 15/62 (January 20, 2005): 5199, 5200. Respectively Marion Seelig of the PDS/Die Linke and Özcan Mutlu of the Greens.
\textsuperscript{473} B 15/58 (October 28, 2004): 4852. Alexander Ritzmann of the FDP.
with children) and public officers (who execute a certain authority function from a distance) in their claim for a neutral state.

Also the small opposition party SSW in Schleswig-Holstein had argued that the outer effect on children was sufficient grounds to ban religious dress for teachers. It likewise considered it unnecessary to take into account the subjective intentions of the teacher in question. “Regardless whether it concerns a headscarf or a crucifix, religious symbols have nothing to seek in public schools – except for religious courses”. Yet it accused the CDU of ‘continuing annoying Leiktultur debates with other means’ and proposed a full ban on all religious symbols instead. The FDP, Green party and SPD, by contrast, argued that headscarf-wearing women could only be fired in case they propagated fundamentalist ideologies or in case actual conflicts between parents and teachers occurred. The mere fact of displaying their personal religious beliefs was not seen to undermine their duty to neutrality. Furthermore, the current civil law already contained sufficient guarantees in firing those headscarf-wearing teachers who were found guilty of proselytising their faith. In 2006, however, when the SPD ruled together with the CDU in a new coalition Government, the SPD fraction came out in favour of a law that banned all religious sigs for teachers in order to protect the religious freedom of minors. In its press release, it explained that Christian values were still transmitted in school, with churches continuing to be involved in religious courses. The CDU, however, rejected a law that would also ban Christian symbols. Due to this political impasse, with the CDU trying to maintain a privileged position of Christian churches and the SPD favouring a ban on all religious symbols, Schleswig-Holstein maintained the status quo.

Deputies in Rhineland-Palatinate likewise rejected the unequal treatment of Islam. In contrast to their colleagues in Schleswig-Holstein and Berlin, however, the governing SPD fraction here rejected any move towards strict secularism. Jochen Hartloff of the SPD faction pleaded in favour of the status quo by tolerating headscarves, arguing: “and what follows next? We have a separation between state and church. This is traditionally regulated differently than in France. We have also a separation. But the boundaries are much more blurred in light of our Occidental-Christian background.” Also the Greens argued that Germany’s state-church relations meant that the neutral state of Germany was open for the expression of all religions, while the FDP voiced to the fear of churches that a law against headscarves would move Germany in the direction of a Laic state. Nonetheless, their prognosis was slightly different from the Dutch approach. They chose for a case-by-case approach that would tolerate religious expressions, unless the teachers’ behaviour proved disrespectful to the beliefs and equality of pupils and parents. In contrast

474 SH 15/130 (15-12-2004): 10133.
475 The Greens referred to information of the Central Council of Muslims (ZdM) that in not a single state where headscarf-wearing women had been employed (40 in total) any conflict had emerged. See also press statements of the then spokesperson on integration of the Green party in Schleswig-Holstein, Irene Fröhlich: 408.04 (December 15, 2004). Also SPD fraction leader Jutta Schumann declared in 2003 that ‘clothing, more specifically headscarves, have nothing to do with religious indoctrination’ (September 24, 2003). The responsible spokesperson on education of the FDP fraction in Schleswig-Holstein, Ekkehard Klug, argues in a press declaration that in case a teacher does proselytize gender-inegalitarian ideologies, she can be dismissed from the function of public school teacher. SH 403/2004 (December 15, 2004).
477 RP 14/91 (March 17, 2005): 6094.
to the Netherlands, children’s and parents’ negative religious freedom rights would outweigh the positive religious freedom rights of teachers when no compromises could be found. 478

2. Social cohesion and public order frames

A central argument in the German debate was that the headscarf was not merely an individual religious expression but stood for a collective political ideology conflicting with constitutional values of human dignity, religious freedom, gender equality and democracy. This Political Islam frame was put on the agenda by the CDU in Baden-Württemberg in 1997, and again after 2003, to construct the difference between the crucifix and kippah on the one hand and the headscarf on the other hand. While the former would express Christian and Western educational and cultural values or traditions, the latter expressed a political ideology that contravened constitutional values (Gould, 2008). 479 This Political Islam frame went hand-in-hand with a segregation frame that problematised the headscarf as a form of cultural segregation and disintegration on behalf of the Muslim community. Baden-Württemberg’s Minister of Education Anette Schavan (CDU), for instance, said that the headscarf ‘functioned as a sign of cultural and civilisational segregation and thus worked disintegrating’. 480 Immigrants were called upon to conform to majority society’s cultural norms and values by removing symbols like the headscarf that ‘can mean they hold on to traditions of their home societies.’ 481 According to the CDU in Rhineland-Palatinate, the headscarf also stood for a ‘civilisational self-ethnicisation’, which was in conflict with integration. 482

The contested nature of the headscarf in Islam was taken as a proof that veiling was not a religious duty but (also) a political statement of Islamic fundamentalists encroaching upon Germany’s modern democracy. In its press release of 1998, the Ministry of Education explained that the headscarf was a political symbol that had to be removed by school teachers: ‘the wearing of the headscarf is not part of the religious duties of a Muslim woman. This is recognisable, for example, in that a majority of Muslim women worldwide do not wear the headscarf’. 483 Even though it was recognised that for some women the headscarf could also convey a personal religious meaning, Minister of Education Schavan considered it legitimate to curtail their individual rights in order halt the threat of Political Islam for Germany’s democracy: “using the right to freedom of religion cannot be so exhaustive, that our liberal democratic basic order will crack legally. To protect its freedoms, one must also restrict them”. 484 Wolfgang Reinhart of the CDU fraction in Baden-Württemberg added that the law: “does not forbid the headscarf as a religious symbol, but rather as a symbol for the intrusion of a theocracy, of Sharia law that dishonours all human rights, of fundamentalism and a subordinated position of a woman’s role”. 485 In Baden-Württemberg, the CDU found support from the SPD and the FDP for

479 See for instance the new law proposal of the CDU in Berlin: B 15/2509 ‘Neu’ (February 5, 2004).
481 BW 13/3679 (October 20, 2004).
482 RP 14/91 (May 17, 2005): 6092.
483 Pressemitteilung no. 119/98 of Ministry of Culture, Sports and Youth (July 13, 1998)
484 BW 13/67 (April 1, 2004): 4720
this framing. SPD deputy Ulrich Maurer drew parallels with Muslim countries as Turkey where Islamists would use the headscarf to overthrow the secular state, while the FDP considered it right to draw boundaries to tolerance in order to protect Western democracies from Islamist intrusion.

In the three other states, the problem that the headscarf could symbolise a Political Islam was recognised, but the prognosis of a partial ban on only the headscarf was contested. In Berlin, the CDU faction linked the threat of Islamic fundamentalism to the failing integration of immigrants to German culture. Similar to what we have seen in the French debate, it referred to the Netherlands as a counter-example by suggesting that its multicultural policies had contributed to the murder of the filmmaker Theo van Gogh. Senator of Interior Affairs, Ehrhart Körting (SPD), considered legislation necessary to prevent ‘aggressive and ostensible religious expressions’ in public services. The headscarf was not only a religious expression but also ‘a statement of a political attitude against certain values, particularly of fundamentalist organisations like Milli Görüs and others’ (that had funded the legal trajectory of Ludin). He referred to the jurisprudence of the European Court of Human Rights in the Dahlab vs Swiss case to sustain its position that the headscarf was hard to reconcile with values of tolerance, equal treatment, non-discrimination and respect for different-mindedness, similar to the SSW in Schleswig-Holstein. Also the SPD, Greens and FDP argued that the state had to draw boundaries to claims of religious fundamentalists intruding public institutions, like Milli Görüs. It would be a false tolerance to accommodate signs and symbols that could be interpreted as expressions of oppression and segregation. Despite the clear focus being the headscarf, Berlin deputies favored a ban on all religious symbols and objected the discrimination of Islam. A neutrally formulated law would facilitate the integration of Muslim immigrants by signalling that the state treated them as equals, subsequently preventing their segregation and possible attraction to religious radicalisation. MP Özcan Mütlu (Grünen) countered the argument that a ban would stigmatise immigrants and comprise a veiled racism, by arguing that this argument disregard that most Turkish immigrants were in favour of a strict secularism and falsely assumes that all Turks are Muslims.

In Rhineland-Palatinate and Schleswig-Holstein, the Leftist majority used the same frame as the PDS/Die Linke in Berlin that had initially objected to legislation against the headscarf, because it would only drive moderate Muslims into the hands of fundamentalists by further marginalising and stigmatising them, and contributing to their withdrawal in parallel societies. The Greens in Rhineland-Palatinate argued that

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488 B 15/60 (November 25, 2004): 5016-17.
489 B 15/36 (September 25, 2003): 2864.
490 RP 15/130 (December 15, 2004): 10134.
491 Özcan Mütlu of the Greens particularly criticised the recent approaches of the CDU to negotiate with ‘orthodox, fundamentalist’ Muslim organisation as Milli Görüs, because it would neglect that the majority of German Turks were not practicing Muslims and already fell victim to the demands of religious fundamentalists. B15/58 (October 28, 2004): 4852. See also: B15/45 (February 19, 2004): 3647.
493 FDP in: B 15/58 (October 2004): 4851.
495 B15/45 (February 19, 2004): 3647.
reducing the headscarf to a political symbol that conflicted with German culture would only contribute to the problem of a ‘clash of civilisations’ rhetoric which Islamic fundamentalists could exploit.\textsuperscript{496} In the words of Deputy Nils Wiechmann (Bündnis 90/Die Grünen), who responded to the CDU: “Your law proposal does not serve social peace, but rather encourages fundamentalist groups in their rejection of our Constitution. It can lead to a withdrawal of minorities and serve as a breeding ground for fundamentalist organisations and their convictions.”\textsuperscript{497} Instead of using symbolic and repressive tools, deputies argued in favour of dialogue and trust in the rule of law to bolster the threat of Islamic radicalism. Deputy Jochen Hartloff of the SPD fraction in Rhineland-Palatinate insisted that politicians should not fight intolerance with intolerance but needed to believe in Germany’s ‘wehrafte Democratie’ (a militant democracy, in the sense of a democracy that is able to defend itself against extremist threats: Koopmans, 1995: 41).\textsuperscript{498}

To sum up, the idea that the headscarf stood for a politicised and possibly dangerous Islam within segregated migrant communities for Germany’s modern democracy clearly structured policy debates into a restrictive direction. However, the prognosis of legislation against headscarves was also contested by some left-wing deputies who argued that discriminatory laws would only stigmatise and further estrange Muslim migrant minorities. The SPD in both Schleswig-Holstein and Rhineland-Palatinate, for instance, feared that bans would halt integration processes of Muslim immigrants whose religion would be modernised if the state allowed headscarf-wearing teachers to participate in German society.\textsuperscript{499} Also, the Liberals and the SSW in Schleswig-Holstein feared that a partial ban would only estrange moderate Muslims.\textsuperscript{500} While challenging the reduction of the hijab to a symbol of Political Islam, this counter-frame actually illustrates the resonance of the Political Islam and segregation frames in these federal states as well.

3. Gender equality and women’s emancipation frames

The hijab figured high on the agenda as a symbol of women’s oppression conflicting with Germany’s constitutional values of gender equality. In the 2003-2004 debates, this diagnosis was extended to other gender-unequal practices that were linked to Islam, such as forced marriages and honour killings, resulting in a frame extension (Benford & Snow, 2000). Moreover, the diagnosis of gender-oppression was linked to the problem of Islamic extremism (frame-bridging). The Baden-Württemberg Minister of Education, Anette Schavan, for instance, legitimised her Government’s law project as a defence of Western achievements of gender equality: “the headscarf constitutes, as a political symbol, a part of a female oppressive history. It can symbolise an interpretation of Political Islamism, which conflicts with the principle of equality between men and women. In that sense, it is also incompatible with a fundamental value embedded in our constitution.”\textsuperscript{501}

Proponents of a ban argued that veiling illustrated an inherent conflict between an Islamic, patriarchal culture and constitutional rights of gender equality that teachers needed to educate and embody. In the words of CDU fraction leader Hermann Seimetz in Baden-
Württemberg: “the equality of women and other values of European Enlightenment are alien to Muslim thought. Whoever wants to work in civil service must accept these values.”\(^{502}\) The fraction leader of the Social Democrats, Ulrich Maurer, wondered: “what would it mean for a young girl, who is born in this country and who grows up with our cultural values, who has conflicts with her family, if she is confronted with a teacher who embodies the opposite value system, supported by the German state?”\(^{503}\) By suggesting that only unveiled teachers could embody gender equality, rather than problematising the nun’s habit as gender-oppressive, women’s bodies became markers of intrinsically different cultures and functioned to create boundaries between insiders and outsiders of the German nation (see also: Rostock & Berghahn, 2007). The Greens contested this framing by arguing that veiled teachers who had managed to become school teachers actually proved that emancipation within Islam was possible, enabling Muslim women to show that they can teach in accordance with ‘German’ values of gender equality. But in this counter framing, Muslim women are likewise seen as culture bearers and as agents of change, charged with the double responsibility to emancipate their community and to disprove that all Muslims are fundamentalist patriarchs (Weber, 2004).

In Schleswig-Holstein, deputies of the CDU successfully presented a multicultural policy that accommodated minority’s cultural practices as a bad policy for girls and women.\(^{504}\) Instead of propagating ‘a false tolerance’ that segregated ‘foreigners’ in parallel societies, the CDU in Schleswig-Holstein argued that the state had to demand immigrants’ acceptance of Germany’s constitutional values and principles, notably gender equality, and propagated a ban on headscarves for teachers.\(^{505}\) Also Social-Democrat Minister of Education, Ute Erdsiek Rave, warned against “a naïve multiculturalism” that would close the eyes for patriarchal practices in Muslim communities and leave girls vulnerable pawns of Islamists who instrumentalised the headscarf to propagate unequal doctrines.\(^{506}\) Only the Greens disputed that a law would be the right means to tackle this problem.

The oppression frame was contested in Rhineland-Palatinate. Deputies of the Green party and the SPD successfully challenged the idea that the hijab symbolised women’s oppression. They referred to the work of Yasemin Karakasoglu - who had testified before the Federal Constitutional Court - to insist that women may have varied motivations to cover, and to argue that the headscarf could also be seen as a way to express a ‘neo-Islamic femininity’.\(^{507}\) When they voiced Muslim women’s claims that they felt naked if they had to teach bare-headed, SPD deputies used a similar argument as the Dutch Left in advocating for a women’s right to choose for religiously modest dress.\(^{508}\)

In Berlin, some members of the FDP shared the diagnosis of the CDU that ‘integrated and modern women’ should be protected against fundamentalist peers.\(^{509}\)

\(^{502}\) BW 12/23 (March 20, 1997): 132-133.
\(^{503}\) BW 12/23 (March 20, 1997): 1634.
\(^{504}\) Marlies Kohnle-Gros of the CDU fraction: RP 14/103 (November 30, 2005): 6894.
\(^{505}\) SH 15/1300 (December 15, 2004): 10128
\(^{507}\) Nils Wiechman (Bündnis ‘90/die Grünen): RP 14/91 (March 17, 2005).
\(^{508}\) Jochen Hartloff (SPD) in: RP 14/91 (March 17, 2005). This had been the claim of Ludin in her constitutional appeal to the FCC. Also in an interview of 1998 with the journalist Thorsten Schmitz in the daily *Süddeutsche Zeitung* (June 23, 1998), Ludin declared that she would feel ‘revealed’ if she had to appear without a headscarf (‘entblösst’, see: Weber, 2004).
\(^{509}\) B 15/122 (October 22, 2003): 2.
Fraction leader Mieke Senftleben, for instance, argued that young girls should not be confronted with teachers expressing women-unfriendly ideologies. The SPD also worried about the influence of Islamic fundamentalism on the liberty of young girls. Fritz Felgentreu (SPD) argued that: “the city of Berlin, where so many Muslims live, should particularly protect those from authoritarian influences that are the focus point of Islamist ambitions: the common people in the inner cities, the children and youth that are just in lower and middle schools.”

Similarly, the Greens argued that only a secular school could foster the emancipation and freedom of young girls. The governing party PDS/Die Linke, however, that a ban would not solve the problem of forced covering, or other problematic practices such as forbidding girls to participate in swimming, sexual education courses, gender-mixed gymnastic courses, or school trips. In fact, PDS deputies argued, in vain, against a ban because it would deprive migrant women of ‘free spaces’ (‘Freiräume’) where they could work and gain (more) autonomy. The PDS managed to include alternative solutions to tackle identified problems of gender inequality among Muslim migrant communities. In 2007, the SPD-PDS Government formed a working group ‘Islam and the School’ to discuss ‘religious and cultural’ problems. The working group engaged with community organisations, families, and experts, including Seyran Ateş and Necla Kelek.

The problem of gender inequality was thus clearly linked to Islam and the realm of the family, with the state now interfering in hitherto considered ‘private’ domains. In contrast to France and similar to the Netherlands, some deputies of the Left pointed at structural sources of inequality by introducing a participation and discrimination frame. This frame argues that a (partial) ban in the labour-market is a form of discrimination that would in the long term result in further social-economic marginalisation and inequality of migrants. Moreover, this frame was gendered with deputies arguing that a ban on headscarves would halt the emancipation processes which migrant women had embarked upon by impeding their equal chances to participate. Winfried Kretschmann of the Greens in Baden-Württemberg, for instance, argued in vain that a ban on headscarves for teachers and in kindergartens would reduce hijab-wearing women to guest-workers who could only work in cleaning jobs. He also warned that a ban in the public service might result in discrimination in other areas of the labour-market, arguing that instead of a ban, the state had to actively create space for hijab-wearing women in German society to foster their emancipation.

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510 B 15/45 (February 19, 2004): 3645.
512 According to a recent study that was enacted after the so-called Islam conferences, seven % of young girls do not partake in mixed swimming courses and ten % of girls are not allowed to participate in school trips. Recently, a higher Administrative Court in North Rhine-Westphalia concluded that schools may demand of parents to conform to compulsory swimming courses when entering the school. The educational objectives of the school outweighed the religious freedom rights of parents, because possibilities existed for girls to wear ‘burqinis’ that cover their bodies: ‘Gerichtsurteil. Muslimische Mädchen müssen mitschwimmen’, Spiegel Online (July 2, 2009). The judges depart from a previous ruling of the Federal Administrative Court in 1993 that argued that parents had the right to claim exemption for their daughters from gender mixed swimming courses for reasons of conscientious objection as long as no segregated swimming courses existed: ‘KRM kritisiert die Entscheidung des Verwaltungsgerichts Düsseldorf, online at www.Islamrat.de (May 19, 2008).
emancipation. Finally, the Greens pointed to the gender-discriminatory effects of a ban, by excluding headscarf-wearing Muslim women from public teaching jobs (whose attitudes were possibly compatible with the constitution) but allowing bearded Muslim men (possibly holding radical thoughts). In Rhineland-Palatinate, this frame was used by the Bündniss/Die Grüne and the SPD to advocate for the inclusion of the few hijab-wearing women present in their state schools. Some of them drew a parallel to Christianity, arguing that German culture had historically ‘likewise’ propagated gender inequality. Like their French counterparts, they suggested that Muslim women would become ‘free’ and ‘equal’ if they would be able to participate in German society and modernise their religious culture. Muslim men were no policy targets, and no structural solutions were offered to remove socioeconomic obstacles for women to participate.

In Berlin, in contrast, the PDS/die Linke took up the claim of the Berlin Commissioner of Integration, Günther Piening (Bündniss/die Grünen), to push for anti-discrimination projects to improve hijab-wearing women’s access to the labour market to support their integration. Like the Green Party in the Netherlands, PDS deputies identified discrimination as an obstacle to migrant women’s participation in German society. It successfully lobbied for integration programmes, that focused on combatting discrimination, enhancing multi-linguistic staff in public services, and offering educational, language, and skills trainings for immigrant women. In 2008, the Berlin left-wing Government issued a folder warning that headscarf-wearing women could not be excluded from private sectors of the labour market on grounds of religion. The folder aimed to ‘decrease prejudices, to prevent discrimination and to encourage women to defend themselves against hindrances’. The folder immediately triggered a response from the SPD members Seyran Ateş and Serap Cileli, who argued that it conveyed a ‘knee fall for fundamentalists’. Moreover, they argued that the choice to wear a headscarf was as a form of self-exclusion rather than discrimination. The new law that prohibited religious symbols in public institutions was, however, not recognised as (gender) discriminatory, or, this was at least outweighed by the aim of public neutrality.

514 Winfried Kretschmann (Greens): BW 13/104 (December 1, 2005): 7525
515 BW 13/67 (April 1, 2004): 4708.
516 Pressstatement: ‘Arbeitsverbot wegen Kopftuch verbaut Chancen von Frauen’ (November 13, 2003). And ‘Muslimische Frauen integrieren- nicht ausgrenzen: Ein Kopftuchverbot lost keine Probleme!’ (February 17, 2004). He also lobbied for programs to combat both Islamic extremism and right-wing extremism, to support schools in finding solutions for local conflicts about girls not partaking in swimming courses, as well as for several sensitizing projects about the position of girls and women in immigrant communities.
517 B 15/3254 ‘Stichwort: Antidiskriminierungsmassnahmen’. In addition to the Greens, the FDP and CDU abstained from voting: B 15/62 (January 2005).
9.5 Analysis and conclusion

Cleavages
Contrary to my expectations, historical cleavages around religion reappeared in the headscarf debate and intersected with the centre-periphery cleavage. When the Federal Constitutional Court gave leeway to the Länder to decide upon relations between state, religion, and citizenry, political actors seized this opportunity to freeze the privileged position of the Christian church in their Land, by banning only Islamic expressions. In other states, like Berlin, the verdict was used to ban religious expressions altogether from public schools and institutions. The secularist stance of the Greens and Social Democrats in Berlin contrasts with their counterparts in the South-Western Länder. This may be explained by the different role of religion in the East of Germany, where churches lost their institutionalised ties with the state during the Communist era, and where religious courses have never been part of public school education. Others have argued that the rejection of organised collective identities after the Communist era may have shaped the Left’s hesitancy in accommodating the headscarf (Saharso, 2007). Their plea for bans on religious dress in public service functions triggered the mobilisation of churches wanting to maintain Germany’s open neutrality tradition.

This politicisation of the teacher’s headscarf can only be understood through analyzing salient cleavages over the nation and ethnic differences. As spouses of immigrants or as labour-migrants, headscarves did not constitute a problem. The ideological debates about national self-conception occurred only after women embarked upon public school teaching careers, actively shaping children’s worldview. The visible Islamisation of Germany’s public institutions triggered responses by Union parties which framed the nation as a Christian Occidental nation, at odds with symbols illustrating a ‘conflicting’ Islamic culture. Left-wing politicians challenged the representation of the nation as an ethno-cultural community based on a shared Christian Judeo culture. They emphasised the equal treatment and integration of Muslim minorities, but were divided on the religious cleavage.

In contrast to my expectation, gender cleavages also reappeared when multiculturalism was framed as endangering women’s rights and giving leeway to extremist Islamic ideologies that threatened achieved values of gender equality. Both the Left and the conservative Right stood up to defend gender equality, although they sometimes differed on the course of action.

The intersection of cleavages around gender and nationality may explain why the headscarf became a contentious issue after all in German policy debates.

State-church patterns
Accommodating pupils’ headscarves fit Germany’s state-church relations. The FCC clearly stipulated that pupils’ and teachers’ headscarves did not conflict with Germany’s open neutrality tradition. In the public school, the state had to reckon with (Muslim) parents’ rights to educate their children according to their own religious beliefs. This was hardly challenged. Nonetheless, the Constitutional judges allowed states to depart from this open neutrality tradition in regard to teachers. Particularly in light of Germany’s changed social relations, legal limitations on the religious freedom rights of teachers were seen as legitimate means to sustain religious peace, even in the absence of actual conflicts. We have seen how deputies seized this opportunity to frame teachers’ headscarves as
conflicting with state neutrality and pupils’ and parents’ rights. Eight states have passed laws restricting the right to religious freedom of teachers, which are clearly at odds with and illustrate a change in Germany’s historic state-church traditions.

A closer look of the legislation reveals, however, that five states still allowed for the religious expressions of Christian and Jewish communities. By framing these as expressions of a cultural tradition marked by human rights, deputies linked their frames with institutionalised anchors in federal states’ constitutions which held that public schools had to teach such values. Due to the historically close cooperation between secular state authorities and Christian churches, Enlightenment values such as religious tolerance, state neutrality and (gender) equality were seen as having evolved from Christianity, rather than from a revolutionary break with religion as in France (Amir-Moazami, 2007). By arguing that crucifixes and nun’s habits were not religious but cultural expressions of a superior civilization, they managed to circumvent the jurisprudence of the Constitutional Court insisting upon the equal treatment of religions. By only banning headscarves, they both used and reaffirmed an open neutrality tradition that has historically privileged Christianity over minority religions. In states with a more secular and Protestant tradition, like Schleswig-Holstein and Berlin, no such institutionalised anchors could be found. Regional differences in state-church patterns and school education thus determined which frames were privileged over others.

In contrast to the thesis of Monsma & Soper (2009), churches were ambivalent allies for religious Muslims in claiming public recognition for their practices. The representatives of the Protestant Evangelical and Catholic Churches to the Baden-Württemberg Government, for instance, favoured the Government’s new school law, which prohibited headscarves but allowed Christian symbols. Only when the Federal Administrative Court had made clear that the unequal treatment between religions was not possible, and the SPD came out in favour of a strict secularism, did churches lobby for the toleration of teachers’ headscarves. The representative of the Catholic Church to the Government of Schleswig-Holstein, the Federal Council of the Protestant Church, and the German Bishop’s conference, all successfully lobbied against a law that would also further relegate Christianity to a privatised notion. Deputies of the FDP and the CDU in the

legislatures of Rhineland-Palatinate and Schleswig-Holstein voiced their concerns and objected to full bans on all religious symbols.

Churches thus played a strong role in the political debate, lobbying for the maintenance of Germany’s state-church relations when it became clear that also their status could be undermined when religion was privatised in public school functions. In line with my expectation, formal and informal ties with the Government safeguarded their venues and material and symbolic resources to influence policy debates. In contrast, only few Muslim religious organisations were invited to policy debates, such as the Central Council of Muslims (‘Zentralrat der Muslime’) (considered an enlightenment example of a moderate, nationally domesticated Islam). More orthodox Muslim organisations like Milli Görüş, in contrast, were represented as fundamentalist and possibly dangerous, discrediting their legitimate voice in parliamentary debates. The charter of the Central Council of Muslims from 20th February 2002 is telling, in that it states that Islamic law demands the acceptance of the German constitution and that it won’t try to establish a theocracy.524 In a letter to the legislature of Schleswig-Holstein, its chairman, Nadeem Elias, insisted upon the compatibility of Islam with Germany’s tradition of open neutrality, and defended Muslim women’s right to adhere to what the Central Council considered religious duties. His claim that the headscarf expressed personal faith rather than a fundamentalist Islam was sometimes taken up by the secular Left to plea against a ban.525 Also the Central Council of Jews, which rejected the co-optation of Judaism by anti-Islam discourse, emphasised the equal treatment of religions and the recognition of Germany’s multi-religious society.526

In other words, the path-dependent effect on Germany’s state-church relations can explain why legislation against the headscarf was blocked: rather than moving in the direction of a secularist state when institutional obstacles constrained partial bans, deputies accepted the toleration of Islamic minorities’ religious practices in public schools. In the words of Federal President Johannes Rau (SPD) in a speech on religious freedom and Islam in Germany: “I am convinced that we cannot forbid one religious symbol, which the headscarf also is without doubt, and still believe to leave things the way they were”.527 Germany’s state-church relations of an open neutrality that cherished an ‘active’ right to religious freedom, rather than a privatised notion, enabled frames that pleaded in favour of accommodating headscarves as a religious freedom right. The attempts to prohibit the headscarf but allow the expression of religious symbols can likewise be interpreted as a path-dependent effect, with institutionalised actors trying to maintain a state-church system that privileged majority religions. Only in Berlin did deputies depart from historical traditions, which illustrates the feed-back effects of the political process on institutional patterns.

Citizenship and migrant integration policies

The five laws prohibiting symbols of ‘foreign’ religions yet tolerating those of ‘native’ German culture are in line with Germany’s citizenship policy legacies, which have long excluded ethnic minority migrants from formal citizenship. They reaffirm an ethnic self-conception of the nation that excludes migrants from full citizenship or requires the assimilation of migrants to a dominant culture, albeit that their otherness was now constructed on grounds of religious (instead of ethnic) differences. Two states only reformulated laws in neutral terms when it became clear that Christian expressions also had to be relegated to a designated private sphere if the state wanted to prohibit headscarves. In line with Germany’s weak anti-discrimination framework, headscarf-wearing teachers had few opportunities to claim rights equal to nuns’ in expressing their religion. Several judges considered the wording of Christian Occidental laws to be constitutional, illustrating they also continued to retain a rather mono-culturalist national self-understanding. Moreover, neither the Federal Constitutional Court nor the German Equal Treatment Committee problematised the indirect discriminatory effects neutrally formulated laws have for Muslim minorities, many of whom are ethnic minorities. In contrast to the Dutch ETC, the FCC argued that because “the prohibition is limited to teachers in public schools,” headscarf-wearing women could still teach at (very few) private religious schools and were thus not discriminated against (HRW, 2009: 32).

I expected that the changes in German citizenship laws would create a more favourable structure for hijab-wearing women to claim equal rights and recognition. This expectation was only partially met. Deputies still managed to push for partial bans on headscarves only, which directly discriminate against Muslims, by framing headscarves as symbols that could be interpreted by third persons as symbolising an Islamic fundamentalism at odds with constitutional values. Native religious symbols, in contrast, were represented as being in line with liberal democratic values that had emerged out of a Christian culture. Nonetheless, we have also seen how actors referred to institutionalized principles of equal treatment and non-discrimination, both in national and international law, which discredited nativist frames that demanded the assimilation of migrants to a Christian Leading culture. Still, even though there were no institutional constraints to opt for multicultural recognition of the headscarf, only few states have accommodated headscarves (particularly if we take into consideration that most states are Eastern German states where the issue has not –yet – been politicised). This seems to point at a path-dependent effect of Germany’s citizenship and immigrant integration patterns, which continue to emphasize the assimilation of immigrants to a German (secularised) majority culture in public institutions rather than multiculturalism.

The deeply institutionalised logic that immigrants have to integrate and modernise according to a European framework privileged those migrant actors who echoed the dominant view that headscarves were not (only) religious symbols, but also political symbols of an ideology conflicting with a European civilisation. Such was the case of Bassam Tibi, a prominent political scientist of Turkish descent who had informed the Minister of Education of Baden-Württemberg in 1998 that headscarves were no religious duty in Islam, and advocated fostering a secularised Islam.528 Several other migrants’ self-organisations warned against the tolerance of the headscarf as an expression of a fundamentalist stream of Islam, at odds with European values of gender equality, such as

528 See also his letter to the Schleswig-Holstein Parliament: SH 15/4474 (March 8, 2004).
the German Turkish community (‘Türkische Gemeinde Deutschland’, TGD)\textsuperscript{529}, the Turkish federation Berlin-Brandenburg (‘Türkische Bund in Berlin-Brandenburg’, TBB)\textsuperscript{530}, and the Turkish Islamic umbrella organisation DITIB.\textsuperscript{531} Their claim for a fully secularised neutral state resonated in Berlin, where deputies of the SPD, FDP and the Green Party voiced the concerns of the representative of the Alevi community (‘Alevitische Gemeinde Deutschland’) that young girls from liberal Muslim homes fall victim to a fundamentalist interpretation of Islam and are in need of a secular public school.\textsuperscript{532} Yet while their frames resonated in the political debate, they could not prevent that parties like the CDU co-opted their frames to push for a partial ban on only headscarves.

Non-governmental actors that pleaded for the inclusion of hijab-wearing women as teachers were the Foreigner Council (Ausländerbeirat) in Rhineland-Palatinate\textsuperscript{533} and the Intercultural Council of Germany (an NGO working on cultural diversity), who were invited to parliamentary debates in Rhineland-Palatinate.\textsuperscript{534} Integration Officers working within state institutions communicated their views to politicians, subsequently providing procedural access to policy debates. Only in left-wing Berlin - generally considered one of the more liberal cities in regards to immigrant integration (Koopmans & Olzak, 2004) - did they manage to rally support for policy measures to protect hijab-wearing women from discrimination, and then only in the private sector of the labour market. Regional differences in immigrant integration policies and processes can therefore explain the differences in policy responses to the hijab, together with differences in party constellations (see below).

\textit{Gender machinery and women’s emancipation policies}

Germany’s emancipation policies have largely dealt with women in their roles as mothers and caretakers. The weakly institutionalised gender equality approach of German emancipation patterns may explain why deputies managed to pass laws that directly discriminated against Muslim women, on intersecting grounds of religion, gender and sex. Even though the Federal Constitutional Court had refuted the claim that headscarves conflicted with principles of gender-equality, relying upon the insights of a feminist ethnographer that women can voluntarily choose to cover, it argued that teachers’ headscarves could be forbidden because of the potential conflict that emerges when third

\textsuperscript{529} Hakki Keskin (the then chair of the TGD) in an interview in FAZ (January 19, 2004). See also ‘No compromises in the headscarf discussion (September 26, 2006)’, on its website.


\textsuperscript{531} ‘Das Kopftuch ist nicht so wichtig, interview mit Ridvan Cakir’, \textit{ZEIT Online} (June 3, 2004). He was quoted by Serap Cileli in a hearing of the Parliamentary Commissions of Youth and Education on July 11, 2005 in Rhineland-Palatinate.

\textsuperscript{532} SH 15/4462 (April 21, 2004).

\textsuperscript{533} RP 32/39 (July 11, 2005). Vicente (‘Arbeitsgemeinschaft der Ausländerbeiräte’) in an expert-meeting with the Parliamentary Commissions for Youth and Education and Justice.

\textsuperscript{534} RP 32/39 (July 11, 2005). Thorsten Jäger (‘Interkulturellen Rates in Deutschlands’) in an expert-meeting with the Parliamentary Commissions for Youth and Education and Justice in Rhineland-Palatinate:
persons interpret the headscarf as gender-oppressive. Deputies seized this opportunity to push for bans on teachers’ headscarves, framing these as symbols of oppression from which children needed to be shielded. The FCC did not consider the gendered effects of (neutrally formulated) laws that prevent practicing Muslim women from embarking upon public school careers.

Traditional women’s lobby organisations or grass roots associations were not invited to any policy debate. Moreover, the targets of the policy debates were fully neglected. Not a single headscarf-wearing woman was represented at decision-making moments. Secular liberal Muslim feminists, in contrast, did manage to be invited to policy debates as authorities on Islam to explain the gendered meanings of the headscarf in Islam and Muslim culture. Feminist lawyer Seyran Ateş (SPD) was invited to a public hearing in Baden-Württemberg,535 and (the Kurdish) Necla Kelece and (the Alevi) Serap Cileli to a hearing in Rhineland-Palatinate.536 The latter argued that the headscarf was not a religious duty, but rather a cultural patriarchal tradition and a tool of Islamic fundamentalists to spread gender-unequal doctrines, arguing in favour of a neutral public school to protect Muslim girls. They found support within the German women’s movement, such as the well-known feminist activist Alica Schwarzer who compared the headscarf to the yellow star that Jews were forced to carry during the Nazi regime;537 or Halina Bedowski who drew a parallel with patriarchy within Christian churches but nonetheless objected to a ban (Berghahn & Rostock, 2009: 482). Conservative Union parties co-opted such feminist frames to push for bans on headscarves that exempted Christian signs, in order to sustain the status quo rather than improving women’s rights.

This resulted in a rather hegemonic representation of Muslim migrant women’s interests and identities, with secular women defining the path to emancipation in terms of a break with Islam. The paradox is that this exclusion seems to contribute to their mobilisation, as we have also seen in France and the Netherlands. Lacking institutional venues, various Muslim women demonstrated in Berlin against the ban in civil service in January 2004, with women carrying banners stating ‘No force in Islam’ or ‘My head belongs to me’.538 New Muslim women’s associations emerged that critiqued stereotypical images of hijab -women as oppressed victims or fundamentalists in online appeals and letters to newspapers.539 After the first Islam Conference of September 27, 2006, where

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538 The demonstration took place on January 17, 2004. It brought together 1000 to 2000 people and was organised by IMbus (Initiative Berliner Muslims). The demonstration was blocked by the Berliner Türkische Gemeinde and Türkische Gemeinde Berlin-Brandenburg.
539 The group Initiative für Selbstbestimmung (‘Initiative for Self determination’) wrote various open letters, among others to Ekin Deligöz, Lale Akgün and Mehmet Daimagüler, who appealed Muslim women to remove headscarves in the weekly ‘Bild am Sonntag’ (October 14, 2006). Another example of a new organisation that critically scrutinizes the public debates on Muslim
secular Muslim feminists like Necla Kelec were invited together with a wide range of (male-dominated) moderate Islamic organisations but only one headscarf-wearing woman, several women within male-dominated Muslim umbrella organisations in 2007 created the first national Muslim women’s organisation, the Action Alliance (‘Aktionzündnis’). The Green and the Social Democrat parties have supported the Alliance and organised a conference on Islam and feminism.

In contrast to what state feminist theories suggest, it were not gender equality officers but female Commissioners of Integration and Women’s Commissioners for the Islamic Community (to the government of Hessen) who communicated their frames. They pointed to the gendered effects of legislation and pled for the self-determination of Muslim women over their strategies of emancipation. Furthermore, they pointed at the counterproductive effects of bans for the emancipation process of Muslim women, such as former Berlin Commissioner on Foreigners, Barbara John (CDU), in a hearing on the hijab for the parliament in Rhineland-Palatinate. She argued that a ban not only limited migrant women’s access to the labour market, but would also pressure women to choose side of their communities, surrendering to gender-oppressive community norms rather than criticizing them. Together with Berlin Integration Officer Marieluise Beck (Greens) and


This was Ayten Kilicarslan, representative for the Islamic umbrella organisation Ditib. See for an interview with her: Oestrich, H (2007), ‘Ich will kein Mitleid für mein Kopftuch’, TAZ (May 4, 2007)

Women came from the Central Council of Muslims (Zentralrat der Muslime), from Ditib (Türkisch-Islamische Union der Anstalt für Religion), from a meeting centre for Muslim women (Begegnungs- und Fortbildungscentrum muslimischer Frauen, BFMf), and from the Islamic Research Centre in Cologne (Zentrum für Islamische Frauenforschung in Köln). They presented their council to the scientific bureau of the SPD, the Heinrich Böll foundation in November 2007. Heide Oestrich, ‘Mit dem Koran Frauenrechten kämpfen’, TAZ (November 15, 2007).


Cakir, N. (2006), ‘Emanzipation nur ohne Kopftuch?’, TAZ (November 4, 2006). See also: ‘Muslime wollen selbst emanzipieren’, TAZ (February 26, 2005). Naime Cakir criticized the idea that only secular Muslims are liberated and integrated, because it neglects devout women’s struggles against sexual inequality and reduces them to their headscarves. She insisted upon education, equal chances in the labour market, language courses, and support to gain economic independence as means to foster emancipation and sexual equality.


the CDU politician Rita Süssmuth\textsuperscript{546}, John launched a petition in 2003 to argue against bans on headscarves and for solidarity with all those who combat Islamism, including those with headscarves.\textsuperscript{547} The appeal was signed by more than seventy prominent women working in different sectors including high state functions. The appeal also triggered counter reactions of secular feminists who considered accommodating gender oppressive practices within religion, such as the headscarf, an offense to their secular feminist project.\textsuperscript{548}

We have seen how only in Berlin, generally categorised as a gender-equal friendly state (Lang, 2009), feminist claims for equal opportunities in the labour-market and economic independence as means to tackle gender inequalities shaped actual policy responses. This was the result of the active lobby of PDS/die Linke, whose Fraction leader Udo Wolf referred to the call of Marielouise Beck in a parliamentary debate on the hijab in 2004. It pushed for anti-discrimination measures to foster hijab-wearing women’s acceptance in society, together with its coalition partner SPD and Integration officer Günther Piening (Bündniss/die Grünen).\textsuperscript{549} In the Berlin integration report of 2005 of the SPD/PDS government it was written that “family often means also a submission to father and brother’, which illustrates the predominant view that gender inequality was situated in the realm of the family and Muslim culture. But it also represented hijab-wearing women as ‘often highly educated and qualified young Turkish’ women who chose to cover to emphasize their individuality but can’t find a job due to societal prejudices.\textsuperscript{550} The combination of its immigrant integration regime and gender machinery may explain why the participation and discrimination frame resulted in anti-discrimination policies, even though Berlin simultaneously passed Germany’s most far-reaching law that not only forbids religious symbols for teachers but also for other civil servants.

\textit{General political opportunity structures}

Germany’s federal state system, and the subsequent decentralisation of certain policies like education, explains why different policy responses could emerge within Germany. The Federal Government was hesitant to correct states that did not conform to the jurisprudence of the Federal Constitutional Court. Some FDP members of the Bundestag asked the Federal Government for a response to the new legislation that was introduced by Baden-

\textsuperscript{546} Rita Süssmuth Minister of Family Affairs from 1985 to 1988. Barbara John was the Commissioner for foreigners (‘Austländerbeauftragte’) to the Federal Government from 1981 to 2003 and is currently working for the new Equal Treatment Commission within the Ministry of Family Affairs. Others within political parties that opposed a law were Hanna-Renate Laurien of the CDU, Renate Künast, Claudia Roth and Krista Sager of the Greens.


\textsuperscript{548} See the appeal that framed Beck’s appeal a ‘backlash’ against feminist ideals. It was signed by more than hundred women: Bendkowski, Halina, Günter Langer, Helke Sander and others. 2003. ‘Stichwort: ‘Becklash’. Offener Brief an die Integrationsbeauftragte Frau Marieluise Beck, die Frauenministerin Frau Renate Schmidt und die Justizministerin Frau Brigitte Zypries’ (December 17, 2003): online at http://isioma.net/sds06203.html (Retrieved January 14, 2011). Beck’s initiative also triggered a reaction of ‘democratically minded migrants’ who did not feel represented by the appealers speaking in their name ‘Für Neutralität in der Schule’, TAZ (February 14, 2004).

\textsuperscript{549} B 415/45 (February 19, 2004): 3646.

Württemberg. Nonetheless, both the Red-Green coalition (1998-2005) and the Grand Coalition CDU-SPD (2005-2009) argued that it was up to the federal states to decide upon the place of religion in public schools and institutions.

Contrary to the expectation that the Federal Constitutional Court functioned as an institutional constraint, it actually created opportunities by decentralising the question of conflicting rights to the legislatures of federal states. In line with my expectation, it had no power to correct states that ignored its jurisprudence of equal treatment. Also in line with my expectations, Germany’s proportional electoral system only constrained the capacity of the state to act in case the two largest parties, SPD and CDU, ruled together (e.g. in Schleswig-Holstein). When one of the parties ruled alone, or with a small party like the FDP or the PDS, states’ governments had much capacity to act upon policy frames of the majority in the legislature.

**Power constellations**

Table 7 illustrates that Christian-Occidental legislation was passed every time a conservative government of the CDU ruled, either alone or together with the FDP. When assessing the voting behaviour of parties at the federal state level (see: Henkes & Kneip, 2009), it becomes clear that the CDU factions always voted in favour of such legislation. The FDP and the SPD appeared more divided about the desirability of a law. The FDP always supported restrictive legislation if it formed a coalition with the CDU, but rejected it when it was an opposition party (Henkes & Kneip, 2009). In the former case it framed the discrimination between faiths as unconstitutional; whereas in the latter case it endorsed a frame that the headscarf conflicted with a Christian-Occidental cultural tradition and neutrality. The SPD generally rejected legislation that differentiated between Christian and Islamic religious symbolism (as an opposition party in Bayern, Hesse, Lower-Saxony and North Rhine-Westphalia, and as part of the Government in Schleswig-Holstein and Rhineland-Palatinate). Only in Saarland and in Baden-Württemberg, it voted in favour of Christian-Occidental legislation (as an opposition party), but this can be explained by the fact that the Federal Administrative Court had not yet concluded that such legislation was unconstitutional.

Nonetheless, the SPD appeared an ambivalent ally for hijab-wearing woman, initiating bans on all religious expressions in public functions (e.g. as a government party) in the city-states Bremen and Berlin, and eventually also favouring restrictions on religious dress in Schleswig-Holstein. As we have seen in the Netherlands and France as well, the Social Democrats increasingly adopted certain elements of the discourse of the conservative Union parties in regard to immigrant integration. The then-Federal Chancellor Gerhard Schröder (SPD), for instance, said on 22nd November 2004 that ‘immigrants’ had to conform to constitutional values by removing their headscarves when teaching in public schools, also to prevent parallel societies.\(^{552}\) Migrants should not get the impression that they could be exempt from such citizenship duties (enjoying a so-called ‘extra-Recht’), implicitly linking Muslim migrant minorities with Islamic extremists that threaten the German constitution.\(^{553}\) The President of the Federal Bundestag, Wolfgang Thierse (SPD),

\(^{551}\) BT 15/1677 (October 10, 2003); BT 16/4242 (February 1, 2007); BT 16/6079 (July 13, 2007); BT 16/7271 (November 14, 2007).

\(^{552}\) ‘Schröder will keine Lehrerinnen mit Kopftuch’, Spiegel Online (November 21, 2004).

\(^{553}\) RP 14/91 (March 15, 2005): 6101, and RP 14/103 (November 30, 2005): 6893
similarly argued that migrants had to conform to the ‘free democrat order’ of Germany by removing headscarves in public service functions and respecting gender equality.\textsuperscript{554}

Only PDS/die Linke in Berlin and Bündnis 90/Die Grünen defended a multicultural citizenship, but its institutionalised power was too small to shape policy outcomes. The Greens always rejected law proposals targeting headscarves, except for Berlin. From my data, it appears that the Left faced a dilemma: while it wanted to include migrant minorities in the German nation and continue to defend gender equality, several of their own constituents with Turkish immigrant background called for bans on headscarves to liberate young girls from religious patriarchal peer pressure. This dovetails with the finding that the SPD was largely left in limbo when conservative right-wing parties managed to appropriate gender equality frames in order to sustain a monoculturalist idea of a Christian Occidental nation, co-opting frames of secular Turkish immigrants in favour of a strict secularism.

I must conclude with Christian Joppke (2009) that the last word on headscarves has not yet been said in Germany. This chapter has shown that institutional structures and policy pasts are not static, but can change because of framing by actors. The hijab debate in Germany illustrates that actors can use institutional trajectories of state-church and citizenship to favour different and sometimes conflicting paths. Different institutional settings interact in such framing contests, which are dynamic and evolving. As we have seen, this framing contest led in some states to some significant changes and breaks with historical trajectories of state-church patterns, while other states sustained the status quo. The path-dependent and intersecting effect of state-church, citizenship and gender regimes is therefore mediated through the political process, with shifting power constellations being significant explanations of how institutions shaped policy outcomes. The analysis also showed that actors seized international events as opportunities to frame their claims for policy reform, such as the murder on Theo van Gogh in the neighbouring Netherlands. Finally, international jurisprudence of the European Court of Human Rights enabled actors to push for policy changes that have moved Germany, even unwanted, closer to France with regard to its state-church relations. Actors also used the EC Equality Directives to dispute partial bans on the headscarf only, but they could not prevent the passing of discriminatory laws in five German states that continue to propagate an the ideal of a Christian-Judeo nation that excludes Muslim minorities.

Chapter 10. Comparative analysis and conclusion

10.1 Introduction
This study has examined the politicisation of the hijab in the Netherlands, France and Germany from 1985 until 2007. In all three countries, the Islamic headscarf, and later the face veil, became contentious issues in political debates, but at different moments of time, in different domains, and each country has developed different policies in response. My research analysed and compared the policy-formation and policy-making processes on this issue in the three countries over time. The starting premise was that three divergent historical policy legacies and their underlying cleavages - state-church relations, citizenship and migrant integration, and gender equality - influence the ways in which actors frame this particular issue and subsequently structure policy responses. By taking into account the influence of shifting power constellations and institutional characteristics of each country’s political system on the policy-making process, I linked the political-process theory with institutional regime theories to explain country-specific policy responses.

Two questions were addressed in this study, one descriptive and one explanatory: What differences and similarities existed in the framing of and policy responses to the hijab in France, the Netherlands, and Germany from 1985 until 2007? To what extent can general and issue-specific political opportunity structures explain differences in the framing and regulating of the hijab? I will discuss my findings regarding these questions in sections 10.2 and 10.3 respectively. In section 10.4 I will conclude with some reflections on the strengths and shortcomings of my theoretical framework, ending with suggestions for further research.

10.2 Findings: cross-national differences and similarities in politicisation of the hijab
In France, debates over pupils’ headscarves flared up in 1989, and remained salient until 2004, when a law was passed prohibiting headscarves and other signs that ‘clearly display’ someone’s religious affiliation in public schools. From the outset of the debate, pupils’ headscarves have been framed in terms of a religious manifestation in conflict with French neutrality, ‘laïcité’. Deputies deliberated whether, by displaying their religious beliefs, headscarf-wearing girls infringed upon the separation between church and state and endangered the freedom of conscience of other pupils. The idea that the headscarf was not only an expression of personal religious faith but also an instrument used by Islamic fundamentalists was also visible, but initially countered with the representation of the headscarf as a symbol of immigrants’ marginalisation. As long as the state would integrate immigrants socially and economically, their cultural emancipation followed naturally, as it was believed. Moreover, a segregation frame structured policy debates, portraying the headscarf as a divisive symbol of politicised ethno-religious difference that introduced discrimination into the public school. Over time, this diagnostic frame was extended with the emerging problem of anti-Semitism and sexual violence. The headscarf became a symbol for an emblematic problem of Islamic fundamentalism encroaching on core Republican values of individual liberty, equality and solidarity.
Up until 2004, the Government had allowed schools to expel headscarf-wearing girls, in case it was proven they had worn their headscarves in such an ‘ostentatious’ way as to constitute proselytising or provocation. In 1993, it established a headscarf mediator within the Ministry of Education to mediate in case of conflict between schools and pupils or parents. Ten years later, both the Socialist Left and the Right came to favour a Secularism Law forbidding the display of all conspicuous religious signs in public schools, arguing that the law would enable pupils to see each other as equal members of the French nation, protecting visible Jewish minorities from discrimination as well as unveiled Muslim girls who fell victim to the sexual policing of female modesty in French migrant-populated suburbs by orthodox peers. The Clothing Directive, sent to public schools after the law was implemented, noted that forbidden items included large crucifixes, kippahs and headscarves. The law does not apply to parents or university students.

Public school teachers and civil servants in France must keep their personal religious affiliations private during work for reasons of public neutrality, a policy which has never been challenged by any deputy. In French courts, not only judges and public prosecutors but even defendants, members of the public jury and clerks can be asked to remove headscarves if the judge considers them a threat to the order in the courtroom, or believes that they will jeopardise the impartiality and independence of the jury. French decrees also officially stipulate that people’s pictures for official identification purposes must be taken bare-headed. On two occasions the French State Council found it legitimate to require women to remove headscarves on identity cards because.

In 2008, the French debate shifted to Islamic face veils. The State Council had argued that a Moroccan spouse of a Frenchman who wore a face veil was legitimately refused French nationality. The burqa was framed firstly as a problem conflicting with Republican values of human dignity and women’s rights, even when voluntarily chosen, and secondly, as a social-cohesion and public-order problem. Concealing one’s face conflicted with the Republican civic pact of solidarity and, moreover, constituted a public-security problem by turning wearers unidentifiable. In 2010, the French Parliament and Senate passed a law project banning all kinds of face veils in all public spaces, against the advice of the State Council that had only considered contextual bans legitimate. Women who continue to conceal their faces will be fined or sent to a citizenship course, while men forcing their wives to cover can be sent to prison or receive a €30,000 fine. The Constitutional Council has declared the law proposal to be consistent with national and international human rights principles. Only in houses of worship can the law not apply.

In the Netherlands, in contrast, both pupils and teachers have been allowed to cover without significant controversy. In 1985, the Dutch Minister of Education stipulated that pupils have the religious-freedom right to wear headscarves in public schools. In 2003, the coalition Government of CDA, VVD and D66 confirmed this position in a clothing directive, referring to religious-freedom and non-discrimination rights. Public school teachers are also allowed to cover. Prohibitions on teachers’ headscarves were framed as obstacles to migrant women’s equal access to the labour market, hindering their emancipation and integration in Dutch society. In contrast to French private schools, Dutch private denominational schools, both Christian and Islamic, gained the right to create clothing rules that discriminate on grounds of religion in order to protect their particular

denominational philosophy or belief. The hijab only became a controversial topic in the Netherlands after 2003, when politicians questioned public judicial and police officers’ right to wear headscarves. Similar to France, a majority of Parliament considered the display of religious symbols and dress to jeopardise people’s trust in the independence and impartiality of the state. One year later, the Government agreed that although regular civil servants should have the right to wear religious dress, restrictions on the judiciary and law enforcement were legitimate for reasons of neutrality.

When the debate shifted to face veils in 2005, a change occurred in the framing of the issue. While participation was initially seen as a means of emancipation, with the state being responsible for removing cultural obstacles, participation now became the goal. Veiled women were seen as excluding themselves, rather than as being discriminated against, for by wearing face veils they hindered face-to-face communication and social interaction. Face veils were also discussed as symbols of oppression in conflict with Dutch values of gender equality, as well as an impediment to social cohesion and public order by symbolising Muslim’s segregation from society and creating feelings of alienation among citizens. As France, this segregation frame also included a security frame. In 2005, the majority of Dutch Parliament voted in favour of a full burqa ban, which was advised against by the Council of State as a violation of equality and religious freedom. In 2009, the Dutch Government announced a context-specific ban on all types of face covers in the realms of education and civil service. The subsequent year, the new Government announced its plans to ban face covering in public.

In Germany, the hijab did not trigger any political debates except for some regional debates about teachers’ headscarves in 1997. As in the Netherlands, pupils’ right to cover in public schools has been largely uncontroversial, as it is generally interpreted as a religious freedom right and the educational right of parents to raise children according to their own beliefs. Before 2003, there had been no laws prohibiting the wearing of religious dress in any public-service function. All over Germany, civil servants (including teachers) and other public employees had to behave moderately, impartially and neutrally. Neither the laws concerning public officers (both national and federal) nor the corporate contracts regulating public employees mentioned anything that would imply that the expression of personal religious affiliations would contravene these duties.

After 2003, regulation of this matter shifted to the Länder level, due to the ruling of the Federal Constitutional Court that held that legislatures were free to reformulate teachers’ duties of neutrality in a stricter way in order to prevent conflicts. The negative right of pupils to be free from religious indoctrination was allowed to outweigh the positive right of teachers to express their religious belonging. Deputies seized the opportunity and called for bans. They portrayed headscarves as conflicting with state neutrality and the negative freedom of pupils. This was linked to an oppression frame that argued that a ban on teachers’ headscarves would lift pressure on liberal Muslim girls to conform to patriarchal gender roles, thereby fostering their integration. Headscarves were also framed as symbols of cultural segregation and of a Political Islam. Crucifixes and kippahs, by contrast, were framed as cultural symbols expressing a ‘Christian Occidental’ value-system that had shaped Germany’s modern democracy.

Eight of Germany’s sixteen federal states introduced new school or neutrality laws. Three of these laws forbid teachers from wearing any sign of religious, philosophical or political affiliation (Berlin, Bremen and Lower Saxony). In the remaining five states, laws
contain exception or value-reference clauses for the display of ‘Christian Occidental’ cultural values and traditions. In practice, nuns’ habits and yarmulkes are still tolerated while teachers who insist upon wearing headscarves are fired or dismissed (Baden-Württemberg, Bavaria, Hesse, North Rhine-Westphalia and Saarland). In Baden-Württemberg and Berlin, restrictions on religious dress exist for personnel in kindergartens as well, and Hesse and Berlin have introduced laws that also require regular civil servants to appear neutral by removing religious signs and dress. In Germany’s remaining eight states, no laws have been introduced. Five of these are Eastern German states, where headscarves remain a scarce phenomenon and have not (yet) triggered any debates. In the three remaining states, law proposals failed to pass, either because prohibitions on religious dress were considered to conflict with Germany’s open neutrality tradition, or because bans were seen as negative for migrant women’s emancipation and integration.

To summarise, different frames have clearly structured the policy responses in all three countries. Even though deputies sometimes discussed similar problems of neutrality, gender equality or social cohesion, these diagnostic frames resonated differently and resulted in different prognostic frames. Table 8 lists all policy responses that resulted from the framing contest in the three countries in question. The differences are largest in the educational domain, with France prohibiting all religious expressions in public schools for reasons of secularism, while these are accommodated in the Netherlands and Germany for reasons of religious freedom. Moreover, the fact that five German states passed neutrality laws that exempt Christian and Jewish religious expressions can be explained by the resonance of the Christian Occidental frame that did not appear in the French and Dutch policy debates. Comparing policy responses in other civil service functions, a difference is that the Netherlands accommodates religious dress for most public functions, while this has not even been considered a viable policy alternative in France, and two German Länder have already introduced restrictive laws to prevent claims in these domains. This difference is mostly a result from the greater resonance of a participation and discrimination frame in the Netherlands, where discrimination was framed as an obstacle to Muslim women’s emancipation and integration.

But there are also similarities between the three countries, where the hijab has increasingly been politicised after the turn of the century in terms of social cohesion, public order and security. This legitimised calls upon the state to act on behalf of its citizens by drawing boundaries to cultural tolerance and using legislation to solve social conflicts. More recently, in all three countries face covers have become contentious issues, framed in terms of public order and security and, to a lesser extent, gender oppression. In France, they will now also be completely forbidden in public spaces, an option that may be followed by Germany and even the Netherlands if the current government proceeds with its plans. Another similarity is the discrepancy that has emerged in all three countries between the judicial and legislative branches of the state, with the judiciary often taking a more tolerant stance towards the hijab than the legislature. Consequently, a trend can be detected towards a ‘politicisation of the law’ and a ‘juridification of politics’, which went hand-in-hand with the move from a legal tradition of codification (law mostly following social change or jurisprudence) towards a tradition of modification (in which the law has the instrumental function of forging social change) (see Koopmans, 1970 in Loth and Mak 2007: 83). To what extent can political opportunity structures explain these differences and similarities?
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<tr>
<th></th>
<th>Netherlands</th>
<th>Germany</th>
<th>France</th>
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<td><strong>Face veils</strong></td>
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<tr>
<td><strong>Public space</strong></td>
<td>Restrictive clothing directive for pupils and teachers in 2003, for civil servants in 2009; law pending to prohibit face veils in all educational establishments. Not allowed on identity pictures.</td>
<td>Some local policy statements that face veils can be forbidden in educational establishments. Not allowed on identity pictures.</td>
<td>In 2010 law project passed that will prohibit face veils in public space, except in houses of worship. Fine and/or compulsory citizenship test for women; fine and/or imprisonment for people forcing women to cover. Not allowed on identity pictures.</td>
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<td><strong>Headscarves</strong></td>
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<td><strong>Pupils</strong></td>
<td>Tolerant interpretation of law since 1985</td>
<td>Tolerant interpretation of law since 1998</td>
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<td><strong>Teachers</strong></td>
<td>Tolerant interpretation of law since 1998</td>
<td>In 2003/4 laws implemented in 8 federal states. In other 8 federal states tolerant interpretation of law or non-regulated.</td>
<td>Prohibitive interpretation of law since 1989 for all public servants</td>
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<td><strong>Civil servants</strong></td>
<td>Tolerant interpretation of law since 2004, except for police and judiciary (since 2001)</td>
<td>In 2004 laws implemented in Hesse/Berlin that forbid display of religious, political and philosophical expressions for all civil servants, including police and judiciary</td>
<td>Prohibitive interpretation of law since 1989 for all public servants</td>
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<td><strong>Passports</strong></td>
<td>Tolerant interpretation of law</td>
<td>Tolerant interpretation of law</td>
<td>Prohibited in decrees</td>
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10.3 Comparing the influence of national POS on the politicisation of the hijab

10.3.1 Cleavages

In all three countries, religious cleavages structured the debates about the hijab, which may explain its varying degree of contentiousness. In Germany and the Netherlands, where such cleavages were pacified, debates about pupils’ headscarves were not contentious. Both states have historically granted religious groups a large autonomy in the realm of schooling. There was little contestation of the right of families to socialise their children in public schools according to their own religious beliefs. This contrasts with the saliency of this issue in France, where religious conflicts between the secular Republic and the Catholic Church have historically been fierce (particularly in the realm of education and childcare), and only calmed down in the second half of the 20th century. With the increasing visibility of Muslim pupils displaying their religious beliefs in public schools, an old-school conflict reappeared between secular hardliners and moderates. This cleavage intersected with new conflicts over nationality and ethnic diversity, as well as with a lingering gender cleavage. Secular Republicans adhering to the ideal of non-differentialist citizenship, and women’s groups that had long agitated against the public power of the Catholic Church, now mobilised for a Secularism Law that, however, indirectly targeted the headscarf and Muslim immigrants. Multicultural feminists, in turn, now found themselves mobilising against the law together with conservative Islamic groups whose agenda they did not necessarily share.

Religious cleavages in Germany have been pacified for nearly a century, but conflicts about the place of religion flared up during the hijab debates when framed in terms of the nationality cleavage. When Germany opened up citizenship for ethnic minority migrants, conservative parties tried to preserve a homogenous ethnic conception of the nation by framing the headscarf as antithetical to national values, notably of gender equality. They mobilised for legislation to protect the public role of Christianity as an intrinsic part of German culture, while simultaneously relegating practices of ‘foreign’ religions to a private realm. This triggered the mobilisation proponents of a civic concept of the nation, who were, however, divided about the role of religion in public life. Furthermore, the Federal state appeared hesitant to repoliticise regional cleavages by intervening with the autonomy of the Länder regarding this issue. Due to the gendering of the debate in nationalistic terms, also scant mobilisation of women’s groups occurred. In order to protect Muslim girls from religious oppression, some of these paradoxically allied together with conservatives and Christians for a ban on headscarves.

The low saliency of the headscarf in the Netherlands can similarly be explained by the pacification of historical cleavages around religion, the nation and gender. The public visibility of headscarves was initially not considered to be a threat to the old pillarised notions of the nation, in which religious group differences had been recognised and institutionalised. However, religious cleavages reappeared when the burqa debate was framed as a threat to intercommunity relations and to Dutch national characteristics of sexual liberty and equality. Secular liberals, populist right-wing and Christian democrats came out in favour of a full ban on burqas in public space that required some degree of assimilation of Muslim immigrants. This in turn triggered the mobilisation of orthodox Christian minorities, who feared the intrusion of the secular state in hitherto ‘private’ domains of the family and education, as well as of some feminists and multiculturalists
who opposed this gendering of the nation in mono-cultural terms. So far, however, the pupil’s headscarf has not yet become a salient issue, which may be explained by the pacification of historical conflicts over religion in the realm of education.

In short, the headscarf played a strong symbolic role of outsized importance, representing contests over national identity related to the intersection of fault lines around religion, the nation, and gender/sexuality. Each of these three cleavages has shaped the others in nationally specific ways, resulting in a particular constellation of opportunities that enabled and constrained the mobilisation of proponents of bans on hijabs in varying ways. While this constellation of cleavages particularly explains the saliency of pupils’ headscarves in France, we have seen how Muslim women’s religious dress also became contentious in the other two countries when related to national identity, sexuality and ethno-religious diversity. Historical conflicts about religion that were deemed pacified reappeared when the headscarf was used to draw cultural boundaries between national insiders and outsiders. In all three countries, women’s unveiled bodies became markers of alleged gender-egalitarian national cultures that Muslim immigrants did not (yet) share, whether represented as ‘laic’, ‘Christian Occidental’ or ‘liberal’ nations. My analysis of the hijab debates thus corroborates the theory that women and their bodies function as markers of (national) communities (Longman, 2003; Yuval-Davis, 1997). Moreover, it shows that cleavages deemed pacified can flare up again when new issues implicate the same frames that were used in the old debates, resulting in historically unexpected alliances between opponents and proponents of bans on hijabs (see 10.3.3).

10.3.2 General and issue-specific institutions and policy legacies

State-church patterns: Differences in countries’ institutionalisation and regulation of religion can, to a large extent, explain differences in policy responses to the hijab in the realm of education. French deputies successfully framed the accommodation of pupils’ headscarves as conflicting with the separation between state and church, referring to the educational laws of the 1880s and the 1905 law on laïcité. In the Netherlands and Germany, actors could not refer to such institutionalised policy pasts of separation. But even French politicians disagreed whether the display of religious symbols by pupils conflicted with laïcité. While laïcité historically meant that only teachers had to privatise their faith, the new law requires that pupils now also remove religious symbols. The current law thus actually indicates a shift towards a more combative laïcité than had hitherto been practiced. The same holds true for the ban on burqas, framed in terms of public security rather than secularism, and thus restricting certain religious practices based on a much wider notion of the public sphere than had previously existed.

By contrast, Dutch policy debates about pupils’ and teachers’ headscarves were clearly shaped by the institutional logics of Dutch pillarisation. Donning the headscarf in public schools was interpreted as an individual religious freedom right for both pupils and teachers, whereas orthodox religious schools (both Islamic and Christian schools) gained the right to create dress codes that discriminate against pupils on grounds of religion. This confirms Monsma & Soper’s (2009) description of Dutch state-church relations as an ‘even-handed’ treatment of different religious and non-religious worldviews. However,
this pillarisation logic did not extend to the police force and the courts, where religious symbols are forbidden for reasons of state neutrality and the separation between church and state. In other words, different logics shaped state-church patterns in different domains, with neutrality gaining a different meaning in public office functions than in the educational realm (see also Maussen, 2009).

Finally, Germany’s headscarf policies challenge the theory most that policy responses necessarily arise from the constraints or lock-in effects of past state-church patterns. On the one hand, the policy responses of eight German states fit the ‘open and cooperative neutrality’ character of German secularism by accommodating and tolerating pupils’ and teachers’ headscarves. On the other hand, legislation in eight states forbidding headscarves for teachers clearly departs from this tradition. Five states tried to combine an open neutrality tradition with a law that prohibited religious dress but exempted Christian and Jewish symbols by referring to their federal constitutions and educational laws. This fits Germany’s state-church patterns that grant a privileged, institutionalised status to Christian churches which close cooperation with the state in the domain of education. But the laws passed by three other states, which take a strictly secular approach, clearly depart from historical traditions.

Citizenship and migrant integration policies:
We have seen how French deputies framed headscarves as a communitarian drift and a rejection of Republican individual citizenship. Muslim migrants were expected to prioritise their national identities over their particular Islamic identities, as if they were mutually incompatible. Although deputies differed about the means – gradual assimilation through inclusion or a priori exclusion - the Republican school as an instrument to ‘integrate’ girls and transition them from group members to individual French citizens was hardly challenged in Parliament. When the headscarf was linked to ethnoreligious conflicts between Arab and Jewish minorities, Republican non-differentiated citizenship was again juxtaposed with multiculturalism as a motor of integration. The fact that Socialist politicians initially objected a law project that bans hijabs as ‘ostentatious’ religious signs and instead favoured a law that would ban all visible religious signs only illustrates the persistency of the colour-blind ideal of French Republicanism. The burqa was also univocally framed as conflicting with Republican citizenship values and as undermining national unity, even though PS members would eventually abstain from voting. In other words, while taking different stances on actual bans on the hijab, all actors referred to and hence institutionalised a Republican model of citizenship as a normative and cognitive frame of reference.

In the Netherlands, visible group identities were not problematised as conflicting with Dutch citizenship until the turn of the century. In contrast, being forced to interact with a diverse cross-section of society in public schools was considered desirable for social integration. Furthermore, we have seen how the Green Party successfully framed the accommodation of headscarves for teachers and civil servants as enhancing immigrants’ participation in Dutch society, from which emancipation was expected to follow. The Equal Treatment Commission functioned as an important institutional venue to facilitate claims of equal rights and recognition, enabling actors to frame even neutrally formulated bans as indirect discrimination. This all fits Dutch integration policy paradigms of the 1990s, when the government emphasised the inclusion of ‘diversity’ and the social-
economic integration of individual immigrants. Moreover, in line with changes in Dutch citizenship and immigrant integration policies, we have seen how burqas later became politicised as conflicting with Dutch norms and values. Context-specific bans on face covers aimed to foster ‘shared’ and later ‘active’ citizenship, public security and social cohesion. Even though there were no institutional constraints, multicultural recognition was no longer considered an appropriate policy to deal with ethnic differences. The shift from multiculturaklism to assimilationism in Dutch integration policies is thus in line with the shift in the framing and regulating of the hijab, although clear differences with France remain.

Finally, the political incorporation of migrants into the organisation of the state, which Germany embarked upon in 2000 by opening up citizenship for non-ethnic German migrants, did not go hand in hand with the symbolic incorporation of Islam as part of the imagined national community (see also Koenig, 2003: 159). We have seen how in five states, laws were passed that constructed the nation as a Judeo-Christian homogenous entity, accommodating ‘cultural’ symbols of ‘native’ religions like Christianity and Judaism and banning the allegedly political ‘religious’ symbols of Islam. This points at path-dependent effects of an exclusionary citizenship regime, albeit that immigrants’ outsider status now resulted from religious rather than ethnic differences, with Islam being contrasted with national ‘constitutional’ values. In several states, however, deputies rejected such laws as a form of discrimination and stigmatisation of Muslim minorities, which is indicative of new opportunities created by the institutional changes in Germany’s citizenship policies. Three states moved in the direction of the French ‘model’ by passing bans on all religious signs for teachers, even though no institutional constraints existed to opt for the Dutch ‘model’ of evenhanded accommodation. Moreover, the fact that no restrictive bans have (yet) been implemented in eight German states is not a result of an active pluralisation of public space, but rather of the absence of debates about the multicultural society, or of the lack of political will to change Germany’s state-church patterns that continue to privilege Christianity in the public realm. To conclude, the patterns of convergence that were observed between the three countries’ immigrant incorporation policies are only partly reflected in policy responses to the hijab: in all three countries, ethnic minority migrants are indeed expected to assimilate to a national community bound by universal yet typical French, German or Dutch liberal values (see also Joppke, 2009), but the degree and modes of assimilation still differ between countries.

Gender machinery and women’s emancipation policies:
In contrast to Germany and the Netherlands, the French debate strongly focused on the pupil’s headscarf as a symbol of oppression and hardly on the status of adult Muslim migrant women. Proponents of bans, including (new) feminist movements that benefited from the consolidated gender machinery in France, argued that the headscarf conflicted with gender equality principles and could not be accommodated by a Republic that does not differentiate between citizens on grounds of sex. Recently, the burqa has also been problematised as a symbol of sex inequality and human indignity that the Republic cannot endorse, even if women voluntarily choose to veil. At first sight, this rejection of recognising gender differentiated practices like veiling seems to be in line with Republican ideals of citizenship and strict equality that has also shaped French gender equality policies. However, Chapter six showed that French tax and social welfare policies have
long indirectly institutionalised gender differences of women’s motherhood. Moreover, in 2000, the state passed a parity law that requires an equal number of seats for both sexes in Parliament, hence requiring the explicit recognition of sexual difference. Consequently, a paradox occurred that sexual differences are both denied and naturalised; while Islamic gender specific practices of veiling are equated with sex discrimination, majority’s gender practices are seen as normal and even liberatory (Scott, 2005).

Dutch parliamentary debates, in contrast, have not focused on children’s limited autonomy to (un)veil and hardly on adult women’s headscarves as symbols of oppression. In contrast to France, Dutch femocrats within left-wing parties framed the accommodation of the teachers’ hijab as a means for women to gain autonomy as well as a right to self-determination, even when the women ended up choosing non-liberal lifestyles. While it could be argued that this is a result of the greater tradition of recognising gender difference in Dutch emancipation policies (Lettinga & Saharso, 2009), the framing of the German debate contradicts this thesis. After all, here the frame did resonate that the teacher’s headscarf symbolises gender inequality within Islam, whereas German social welfare policies have even longer been shaped by the breadwinner logic and underlying gender different roles than Dutch policies. In order to explain this difference in the gendering of pupils’ headscarves, country-differences in state-church patterns seem more important. In the Netherlands and Germany, schoolgirls wearing a headscarf are not perceived as a problem as school education was and is supposed to link up with the first socialization milieu: the family. The fact that in some German states teaching nuns were not viewed with suspicion in the public school points at the close relation that exists here between Christian churches and the state in the realm of education. In contrast, the aim of the public school in French republicanism is to free children from their communal ties and to install in them an idea of universal citizenship that does not differentiate according to gender or religion. Muslim girls covering and wanting to conceal and thus mark their gendered body fundamentally contradicted the Republican ideology in both ways.

Moreover, we have seen how Dutch deputies did frame the face veil as a symbol of gender inequalities within immigrant cultures. The increasing focus on gender inequalities within the three countries’ emancipation policies that were observed in Chapter six may explain this similarity in the gendering of policy debates on the hijab that represent hijab-wearing women as victims of their religious culture. Nonetheless, in contrasts to the Netherlands and Germany, gender arguments featured dominantly in French claims to ban pupil’s headscarves already well before this convergence in the three countries’ emancipation policies. Furthermore, differences persisted in the policy responses to this diagnosis, with Dutch and Berlin policies also focusing on labour-market discrimination as an obstacle for hijab-wearing women to attain gender inequality. This has not even been addressed as a problem in parliamentary debates in France, despite its consolidated gender machinery and the focus of French emancipation policies on women’s labour-market participation. National gender politics and institutions can, by themselves, not well explain these differences in the gendering of the policy debates and responses between the three countries.

Comparing the effects of institutional settings, we can conclude, that country-specific institutions, policies and governing strategies of state-church relations, immigrant integration and women’s emancipation were important in enabling and constraining certain
policy frames that were more or less in line with previously enacted policies and institutions. Yet, firstly, these different institutional logics interacted in the context of policy debates and cannot by themselves explain policy outcomes. In contrast, different settings simultaneously shaped how rights and values were interpreted and balanced in the debates about hijabs. Changes in one institutional setting subsequently influenced the opportunities that another setting offered for actors to advocate or oppose rights to wear hijabs, and even resulted in changes of these other settings. We have seen, for instance, how the opening up of German citizenship laws discredited (but not impeded) laws that directly discriminated between the religions of natives and newcomers. This resulted in laws that moved Germany closer in the direction of French state-church relations, where all religious expressions are forbidden in state institutions. Conversely, changes in Dutch and French integration policy paradigms towards assimilation increasingly enabled restrictive frames that enabled the passing of bans on hijabs that, albeit in different domains and on different types of veiling, have consequences for their national state-church patterns. In other words, together, rather than independently, institutional frameworks - that are themselves subject to change - create path-dependent opportunities and constraints that can be used by actors to push for certain policies.

Secondly, the impact of national institutional repertoires and policy paradigms on policy outcomes depends on the ways in which actors interpret and use such laws and policies as opportunities and constraints, as well as on their institutional capacity and power to act upon policy frames. The analysis shows that significant leeway exists to extend or change policies and their underlying institutional logics through framing strategies. Actors referred to similar principles and ‘models’ but attributed a different content to them, and reached different conclusions. For instance, both proponents and opponents of bans on pupils’ headscarves in France referred to Republican principles of laïcité, with the former arguing that this implied the privatisation of all conspicuous religious expressions in public schools and the latter that such a ban conflicted with the hands-off approach of a truly colour-blind state. Contra the theory of national citizenship models, moreover, the Socialists in France once interpreted the Republican tradition as persuasive and welcoming instead of oppressive and excluding, while later they invoked the same French Republican tradition to legitimise bans on ‘ostentatious’ religious signs in schools and face covering in public. Through the ways in which actors framed the issue of the headscarf and interpreted their institutional environment, they managed to mobilise others and sustain, expand or change institutional logics. Hence, actors and institutions interact in a dynamic way, rather than that institutions determine actors’ mobilising strategies top-down.

Thirdly, general state characteristics mediate the influence of policy frames on policy outcomes. The institutional capacity of governments to act upon policy frames can explain why, despite a radicalising debate, hijab policies sometimes remained rather stable and accommodative, for instance in the Netherlands. The Dutch Government has still not implemented even a light version of the initial proposal to ban burqas in public space, despite a parliamentary majority supporting this idea. French authorities, in contrast, managed to quickly pass restrictive legislation on the hijab due to the existence of majority cabinets, despite the negative advice of the French State Council regarding restrictions on the pupil headscarf (2004) or the burqa in public space (2009). Country differences in the political systems, with low electoral thresholds and minority cabinets in the Netherlands,
can explain why there was more frame competition in the Netherlands than in France and more need to forge compromises; disagreement between the coalition partners D66 and VVD about the course of action, falling cabinets, and the negative advice of a legal expert committee and the State Council have all led to Dutch policy making remaining incremental. The constraining role of coalition governments on policy making also manifested itself in Schleswig-Holstein in Germany, where the two coalition partners CDU and SPD could not agree upon the content of regulations and eventually stuck to the status quo of religious tolerance.

10.3.3 Power constellations and alliance structures
National power constellations have strongly impacted the contentiousness and the framing of the debates within the three countries. Shifting governments and the emergence of new right-wing challengers can explain some cross-national similarities in the framing and saliency of the issue over time. We have seen how in France, the timing of the politicisation of the headscarf issue can be related to the strength of the right-wing Front National. Each time the FN won elections, the Right politicised the headscarf, adopting certain elements of the FN’s anti-immigrant discourse and pushing for more restrictive policies (a Directive in 1994, a Secularism Law in 2004). Nonetheless, the Left also changed position. In 2003, after the Socialist Prime Minister Jospin lost the Presidential election to Le Pen of the FN, who had defended the inclusion of headscarf-wearing pupils in schools in 1989, the party came out in favour of a ban. While the Communist Party had already been internally divided about the 2003 law, by 2009 it became an important advocate of a full ban on burqas in public space. The framing of the hijab issue in terms of defending key nationalist values and restoring public order was now adopted by the full political spectrum.

As in France, the rise of strong right-wing populism that challenged the position of Dutch mainstream parties can explain the shift in framing, and the move towards legislation. In 2002 the Dutch political landscape had changed significantly - new right-wing parties in Dutch politics challenged the position of established right-wing parties, which in turn adopted a more restrictive discourse in regard to immigration and integration issues. A majority of Parliament came out in favour of a ban in the police force and in the judiciary, reasoning that it would guard the strict boundary between church and state. With the rise of the populist parties of Pim Fortuyn and Geert Wilders, the governing right-wing party VVD and the Christian Democrat party CDA adopted their frame of restoring public order and security in the burqa debates, but also the PvdA came out in favour of a partial ban that would draw some normative boundaries around multiculturalism.

Finally, in Germany we see a similar development. The right-wing Die Republikaner managed to politicise headscarves in the late 1990s in Baden-Württemberg, and the established parties CDU, FDP and SPD endorsed the idea of prohibiting teachers’ headscarves. When Die Republikaner ceased to exist, the CDU filled the void by framing the headscarf issue in culturally differentialist terms. Laws that banned headscarves but excepted Christian and Jewish symbols were all passed under governments ruled by the CDU or CSU, either alone or with the FDP. The Greens (excepting those in Berlin) were the only ones defending the accommodation of headscarves as a way to integrate immigrants. The SPD highly valued constitutional principles of equality and non-
discrimination, but was more hesitant to accommodate ethno-religious diversity. In some federal states, like Schleswig-Holstein where it ruled together with the CDU in a Grand Coalition, it adopted some elements of its Conservative competitors’ discourse on restoring law and order and defending gender equality by favouring restrictions on headscarves as expressions of Islamic fundamentalism. In Berlin, the SPD convinced its coalition partner PDS to pass a ban on all religious symbols in public-service functions, mainly for reasons of public neutrality. But in Rhineland-Palatinate, where it ruled with the FDP that was keen to maintain Germany’s state-church relations, it favoured the recognition of religious pluralism to foster migrant women’s emancipation. This shows that, in addition to the relation between parties in power at the Länder level, regional differences in institutional frameworks shaped the framing of the hijab in Germany.

In short, in all three countries’ shifting power constellations can explain the resonance of policy frames and, together with institutional state characteristics, their (non) implementation in actual policies. Frames became politically influential if actors and parties that supported the direction of that frame held important positions of power. Politically weak actors had few chances to change the course of the debate if their counter-framing strategies did not convince the powerful. Nonetheless, the challenge of the far-Right clearly affected the framing of established parties in all three countries, which adopted certain elements of its discourse that hijabs symbolised an Islamic fundamentalism that conflicted with national values, or that multiculturalism endangered liberal rights or social cohesion. My analysis of the headscarf controversy therefore corroborates the thesis that the electoral successes of the far-Right played an important role in the shift of both the Left and the Right towards a more restrictive stance towards the hijab, an adaptation that they hoped would restore their popularity with voters now attracted to the populist and far-Right (Cf. Schain 2006: 287; Givens & Luedtke 2004: 152).

10.3.4 Conclusion
I conclude with the question of to what extent general and issue-specific political opportunity structures can explain differences in the framing and regulating of the hijab between countries. My answer is that country-specific cleavages, institutional structures and policy legacies clearly created a set of opportunities and constraints for actors to push for certain policy frames. Institutionalised histories of interpreting and governing religious, ethnic, and gender differences together constituted a particular ‘constellation’ of path-dependent opportunities and constraints that shaped political debates in intersecting ways (see also Ferree, 2009: 86). This constellation explains why Germany, France and the Netherlands developed different policies to the issue of the hijab. We have seen how institutionalised policy legacies are intrinsically related to vested interests that mobilised to sustain certain historic traditions, laws and institutions. The differences that existed between parties of the same family across countries corroborate the thesis that institutional policy legacies create path-dependent effects because they are backed by powerful actors. The Dutch and German Christian Democrats, for instance, clearly held different positions in regard to teachers’ headscarves: while the German CDU/CSU tried to maintain the privileged position of the Christian church in the public domain, their Dutch counterparts were informed by the Dutch tradition of even-handed accommodation, favouring the equal
accommodation of all personal religious expressions in this domain. In a similar vein, the French, German and Dutch Left clearly held different positions on the pupils’ headscarf. These stable policy preferences can only be explained by countries’ different historical cleavages and policy legacies, which are reflected in the party system itself.

Nonetheless, my empirical material also illustrates two shortcomings of the theory that political opportunity structures shape policy debates and policy outcomes. Firstly, institutionalized policy legacies not only shaped policy frames, but actors in turn began to shape such institutional arrangements and national self-imaginations through their framing strategies. By attributing certain meanings to the hijab, they invoked different elements of their institutional environment and subsequently managed to create and seize opportunities to push for policy reforms that helped legitimize, expand and sometimes change existing institutional repertoires. This dynamic framing contest resulted in policy responses that changed over time (France and the Netherlands), or that differed within one country (Germany).

For instance, we have seen how German nationalistic politicians managed to circumvent institutional constraints of equal treatment and non-discrimination by arguing that the headscarf, in contrast to the crucifix and kippah, was a politicised symbol that conflicted with constitutional values like gender equality that were allegedly rooted in a Judeo-Christian cultural heritage. This historical anomaly of presenting the German nation as partly Jewish and partly Christian enabled five states to pass neutrality laws that exempted the crucifix and kippah as cultural symbols, consequently sustaining a privileged position of Christianity in the public realm. Moreover, by framing the hijab as a symbol of oppression that conflicted with national values of gender equality, cleavages around gender re-erupted and historical unexpected alliances emerged between conservative parties and feminist movements that both favoured a ban on headscarves for different reasons and interests. Other German actors primarily discussed the hijab as a religious symbol, and seized opportunities provided by the jurisprudence of the Federal Constitutional Court to either push for a ban on all religious symbols or for the recognition of the headscarf.

In other words, national policy legacies do not create unilateral and unmovable incentives or constraints. Their impact on policy outcomes is mediated through a dynamic policy process in which actors and (intersecting) institutions interact (see also Béland, 2009). During this process, actors with different relations of power, resources, and interests, construct and negotiate policy frames that help sustain or change historical policy traditions. Due to the interplay between actors who enter in relations of cooperation and competition, historical fault lines can flare up, new alliance structures can emerge, and public policy legacies can eventually change during the course of the policy process. The theoretical model that I presented in Chapter 2 should therefore be amended to account for the interactions between actors and institutions, as well as among actors themselves. This makes the model less deterministic, and creates more space for the dynamic process of constructing and negotiating frames that, moreover, can have feedback effects on national institutional repertoires and policy paradigms.

Secondly, my empirical material illustrated a similarity in the saliency and the framing of the hijab in terms of social cohesion, public order and security. This similarity can only partly be explained by parallels in the political opportunity structure, namely in the rise of the populist Right that challenged the established position of other parties that adopted some elements of its discourse. In order to explain the saliency of the frames used
by the Right itself, linking the headscarf to Islamic extremism and a security threat, the theoretical model presented in Chapter 2 should integrate structural and non-structural elements that exceed the level of the nation-state yet provide opportunities for nation-state actors’ framing struggles.

10.4 Beyond the nation-state

Politicians not only negotiated with their national institutional environment. They also seized media coverage of international events as opportunities for their policy frames, as well as transnational institutional frameworks like European jurisprudence and law. Nonetheless, because the nation-state still remained the main domain in which headscarf policies were constructed and implemented, such international opportunities and structures did not necessarily result in a convergence in actual policies.

Firstly, after 2001 the media representation of violence by Islamic extremists created international opportunities for actors to push for restrictions of Islamic dress. In France, headscarves had been linked to Islamic radicalism since the mid-1990s, when the country faced several domestic terrorist attacks by Algerian fundamentalists. The idea of the headscarf as a political symbol or tool became increasingly visible in all three countries after September 11, and in the Netherlands particularly after the murder of filmmaker Theo van Gogh in 2004. German politicians also referred to the murder as evidence that multiculturalism led to parallel societies in which violent Islamic fundamentalism was flourishing. In all three countries, the idea that a radical Islam was becoming a public order and security threat shaped policy debates on hijabs. This framing of Islam as a threat to national security and public order went together with calls for stricter norm-setting in all three countries.

While comparable diagnoses emerged on the political agenda, politicians still had to translate international discourses on Islamic extremism to nationally specific languages, which resulted in rather different prognoses and strategies for tackling the identified problem. In France, the emphasis lay on the headscarf symbolising a rising Islamism in the suburbs that challenged secular Republicanism, resulting in a law that banned all conspicuous religious symbols in public schools. In Germany, Islamists would use the headscarf to infiltrate the state and undermine constitutional democracy, resulting in laws that prohibited political and/or religious symbols in public functions. The diffusion of policy frames linking Islam to violence thus created similarities in the saliency and framing of policy debates, but not necessarily in the content of actual policies.

Second, nation-state actors not only referred to (distortions of) their own institutional practices but also used rather crude images of other countries’ policy legacies to push for policy reform. Chapter 4 described how the French Stasi Commission visited other European countries, including the Netherlands, to learn about their methods of managing cultural and religious differences. Even though the Commission members had spoken with several scholars who had defended the accommodation of religious difference in public space\(^{556}\), their report only quoted one scholar who has long criticised Dutch multicultural policies for contributing to segregation and radicalisation, in order to legitimise French Republicanism and a Secularism law in public schools. Conversely, the Dutch Commission Block referred to the French example of laïcité as something that

\(^{556}\) ‘Verbazing over harde Franse conclusies’, *NRC Handelsblad* (February 3, 2004).
conflicted with Dutch traditions of religious tolerance and accommodation. However, in 2009 the Dutch Minister of Interior also referred to the United Kingdom as the wrong way to go. Rather than accommodating headscarves and turbans in the police force as does the UK, the Minister pleaded for a fully secularised police force, a policy that diverged from Dutch state-church patterns of pillarised accommodation. Even though there were not necessarily institutional obstacles in the Netherlands to accommodating headscarves in the police force, or in France to accommodating pupils’ headscarves, actors used other countries’ policy paradigms to legitimise their policy alternative. In other words, actors used national models as ideological resources to push for certain policies, mostly to extend certain national distinctive paths they favoured and to discredit others (see also: Bertossi, 2009; Bowen, 2007b; and Duyvendak & Scholten, 2009).

Third, the jurisprudence of the European Court of Human Rights functioned as a normative resource to legitimise restrictions on the right to wear religious dress in rather national particular ways. In Chapter 3, we saw how the court left nation-states a certain ‘margin of appreciation’ to assess whether a pressing social need existed in light of their own national constitution and political systems. Nation-state actors used this margin of appreciation to push for bans on headscarves. The Stasi Commission (2003: 15) seized the opportunity to legitimise a ban on ‘ostensible’ religious symbolism in the name of French laïcité. The Commission represented laïcité not only as a practice necessary to guarantee a separation between religion and politics, but also to maintain public order and basic values that keep the nation together, notably sex equality. Because the Court had noted several times that the Quranic duty for women to cover was ‘hard to reconcile’ with the principle of gender equality, a Secularism law that revived the constitutional principle of laïcité in order to protect girls from unwanted pressure to cover, would certainly pass the Court’s scrutiny (Bowen, 2007a: 138-9). Also, in Schleswig-Holstein and in Berlin, actors referred to EU jurisprudence on the headscarf in their calls for a ban. In other words, although the European Convention of Human Rights protects citizens’ right to religious freedom, the European Court gives significant space to national actors to interpret and balance this right in light of their national context and traditions. This transnational institutional structure thus paradoxically creates opportunities for politicians to reaffirm and extend institutional logics of historical state-church relations (in France) or change these in a direction that actually restricts citizenship rights to religious freedom (in Germany).

Fourth, the reforms of the EU Equality Directives provided new – discursive-opportunities for advocates of equal treatment for Muslims. In Chapter 9, we saw how Germany’s federal and local integration officers argued that the law of Baden-Württemberg contravened Germany’s new anti-discrimination legislation based on EU Equality Directives, protected by the European Court of Justice (ECJ). Also the FCC had argued that if states wanted to introduce neutrality laws, they either had to tolerate the headscarf or had to ban Christian and Jewish symbols too. Two Länder subsequently chose to reformulate Christian Occidental legislation in neutral terms by banning all religious symbolism. Other Länder, like Schleswig-Holstein, chose to maintain the status quo of religious pluralism. Nonetheless, the EU Directives only impacted national policy

557 And recently also Italy. The ECHR argued that the state did not violate human rights by placing crucifixes on the classroom walls of state schools: Butt, R. (2011), ‘European Court of Human Rights rules Crucifixes are allowed in state schools’, The Guardian (March 18)
558 SH 15/4470 (April 27, 2004); and John in round table in Rhineland-Palatinate on June 11, 2005.
decisions if sufficient political will existed to implement them. In five federal states of Germany, school laws still discriminate against practicing Muslim women by exempting the display of ‘Christian Occidental’ values. In practice, hijab-wearing teachers are fired or rejected as applicants, while nuns are still allowed to teach in their habits. As we have seen in Chapter 9, all appeals to contest this discrimination have failed, because conservative judges have continued to affirm the Christian roots of the German nation. Legal scholars have good reason to believe that if this case will be brought forward to the ECJ, it will overrule national policies (Berghahn, 2011). Some scholars even believe that the ECJ will, in contrast to the ECHR, consider even neutrally formulated prohibitions on all religious dress in schools to conflict with EU Equality Directives. Because the Court has reviewed exceptions to sex discrimination very strictly, obliging member-states to protect women from both direct and indirect discrimination, it may consider such laws to infringe upon principles of non-discrimination on grounds of sex, religion and race/ethnicity (Loenen, 2009: 323). So far, however, the actual impact of EU law on national headscarf policies has been limited.

To conclude, the nation-state has remained a key actor in headscarf policies, despite the diffusion of European policy frames across borders or windows of opportunities provided by international events. My analysis of the impact of European institutions on national hijab debates confirms the thesis of Mathias Koenig (2007), that international human rights law has contradictory implications for Muslim immigrants. While European human rights conventions firmly establish equal rights to religious freedom, they also empower national state actors in the field of religious governance, because they “give new legitimacy to historical institutional arrangements by reframing them as expressions of national identity. […] Transnational institutional forces may actually facilitate both convergence and divergence of national models of religious governance, and may thereby complicate public-claims making of Muslim minorities” (Koenig, 2007: 913).

10.5 Theoretical reflections and suggestions for further research

In this final section, I will reflect upon the theories used in this dissertation and some of the limitations of this study, and give suggestions for future research.

Firstly, this study highlights the need to combine an analysis of general and issue-specific aspects of political opportunity structures, and the need to look at the cumulative, interactive impacts of different institutions and policy legacies on policy-making processes. In this research, the three institutional policy frameworks of state-church relations, migrant incorporation and women’s emancipation were analytically separated to discern their autonomous and independent effects on policy processes. My empirical material made clear, however, that differences in the saliency, framing and regulation of the hijab between the three countries could not be explained by only one institutional setting. Merely comparing countries’ state church regimes to explain how countries responded to the hijab as a religious symbol, or countries’ citizenship and immigration regimes to explain how they responded to hijab-wearing women as (descendants of) immigrants, appeared of limited use. The analysis showed that historical cleavages and institutional frameworks did not merely have additive, autonomous effects on policy debates and policy outcomes, but that they also interacted in the policy process around the hijab. Because contested notions of gender, ethnicity and religion intersected and gave
each other meaning in the debates, changes in one of the three institutional settings had effects on the opportunities and constraints another setting offered, subsequently changing the overall political opportunity structure.

Future comparative research studying policy responses to intersectional claims for equality and recognition would therefore benefit from an intersectional theoretical framework. This means it should scrutinise how institutional and social structures of ethnicity, gender, religion and class (the last of which was under-analysed because of the limited scope of this research) not only create independent and autonomous but also interactive effects on policy debates and outcomes. Several attempts have already been made within comparative gender studies to incorporate ‘intersectionality theory’ into cross-national analysis of states’ policies (see particularly the edited volume of Lombardo, Meier & Verloo, 2009). I think this is a promising incipient research field for cross-national comparative analysis, which could be further developed into theoretical models. Based upon my own findings, it appears useful to examine how issue-specific policies, institutions and political histories define the particular group whose claim is being studied. But rather than stipulating independent expectations for each institutional setting separately, future research should try to formulate expectations how such social and political structures have both independent and interactive logics that together shape policy-formation processes (see also: Choo & Ferree, 2010; Weldon, 2005).

Secondly, by paying attention to shifting power constellations and the institutional setting in which framing struggles take place, this study was able to explain when and why policy frames appeared, resonated and were politically influential. Analysts such as Carol Bacchi (1999), Deborah Stone (1989) or Marten Hajer (1995), to name but a few, have already shown that frames structure policy outcomes. Frame theories would be enriched if they were more strongly linked to political opportunity structure theories. We have seen how the institutionalised power and resources of actors and parties affected their opportunities to influence the dominant discourse and push for policy reform. Shifts in power constellations and the emergence of new political parties that challenged the position of established actors could explain shifts in framing. Institutional constraints, such as the power of intervening courts or the need to forge consensus among coalition partners, meant that a change in framing did not always result in actual policy reform.

Thirdly, a shortcoming of my research is that I have paid only scant attention to the strategies of hijab-wearing women trying to make states responsive to their particular concerns (but see cf. Longman, 2003; Roggeband, 2010). I took the frames of non-governmental actors into account only if they were represented in political debates. I would therefore encourage future research to focus on public debates in the media and on the internet, as well as on debates that take place in institutions other than the state, such as schools, women’s and other NGOs, or religious institutions. This would show which voices and frames were actually represented in key decision-making arenas, and which remained marginalized. Moreover, since this study was limited to the national and (in

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559 Intersectionality theory holds that there is no gender apart from race, ethnicity, nation, sexuality or class, but that each ‘system of oppression’ intersects with and mutually modifies the other. It grew out of the writing of black feminists who argued that their problems, identities and experiences were uniquely structured by their being black women, rather than by being black and female (Collins, 1998; Crenshaw, 1997). Because they confront different structural barriers than black men and than white women, they called for analysis of gender that scrutinises how structures of gender and race and class work together to comprise unique barriers and identities.
Germany) federal levels, it would also be valuable to study debates that take place more locally, along with the actual implementation of policies. Such an analysis would enable us to obtain a clearer understanding of the differences between the interests and concerns in local and context-specific debates and those reflected in national policy debates, as well as which other institutional dynamics interfere in the formation and implementation of policies.

Fourthly, the comparative perspective used in this study has shown that certain policies considered normal in one country, such as civil servants wearing headscarves, may still be considered completely unimaginable in other countries. Analysing and comparing policy debates in their particular political, institutional and historical settings enabled a better understanding of how national ‘models’ were interpreted and used by vested interests as resources of mobilisation that lead to processes of path-dependency. Nonetheless, the findings of this research also provided some indications that transnational opportunity structures and the diffusion of policy frames across borders led to similar trends in national policy debates. Actors linked international discourses on Islamic extremism to headscarves to push for bans, or to international jurisprudence. The availability of opportunities at the transnational level did not always lead to a convergence in the prognosis - the goals and the means of reaching that goal- or in actual policy responses. This draws attention to the relation between the transnational diffusion of policy frames and specific national constellations of opportunities and constraints provided by institutions and constellations of power (Béland, 2009). Future research could scrutinise more closely the impact of international discourses and institutions on national policy making processes.

Finally, this study points towards the importance of including and enriching comparative gender policy studies. Comparative feminist policy studies that compare the gendered nature of state institutions have broadly enhanced our understanding of the extent to which gender machineries and female MPs provide access to women’s movements to gender policy debates in a feminist way. But my findings suggest that they need to focus more on whose feminist project gender-machineries and political actors support, and recognise the diversity among women regarding interests and perspectives (cf. Siim and Skjeje, 2008; Squires, 2007). Despite being the targets of policies, headscarf-wearing women were mainly talked about or talked for - both by advocates and by opponents of restrictive legislation. Moreover, even when feminists gained access to policy debates, they could not prevent that their frames were sometimes coopted for other purposes than fostering gender-equality. Nonetheless, my analysis also corroborates the finding of Zippel (2006: 216) that gender machineries are not necessarily the only institutional venues for women to gender policy debates. The Equal Treatment Committee in the Netherlands and Integration Officers in Germany – the latter formally not charged with gender equality - did provide procedural access for hijab-wearing women and their allies. Analyzing and comparing the institutional and ideological opportunities that exist for women situated at intersecting axes of inequality would greatly enhance our understanding of why certain feminist voices are more successful than others in shaping policy formation, and why this differs between countries.
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Appendix

List of sensitizing questions to code frames

I. Information on the document
Full citation
Occasion of publication
Date/Place of publication
Type of document

II. Voice/standing
Who is speaking?
From which position does the voice speak or is given voice?
Which actors/ documents/ events are referred to?

III. Diagnosis
What is represented as the problem and why? (which type of clothing is perceived as a problem? At which site(s) did the problem occur? Why is the clothing seen as a problem?)
Legitimization of non-problem(s) (what is not seen as a problem, why?)
Causality (what is seen as a cause of what? What is seen as the location of the problem? Which mechanisms reproduce the problem?)
Roles (who causes the problem? Who is made responsible for the problem? Who is seen as the victim?)
Normativity (what is a norm group if there is a problem group? Which values and norms are referred to?)

IV. Prognosis
Which solutions are suggested and why is action necessary?
Is there any hierarchy in goals?
How to achieve goals/aims? (strategy, instruments, means)
Roles (who should solve the problem? Who should act?)

V. Call for action
Call for action or non-action (what is seen as right and what is seen as wrong?)
Who is acted upon? (target group)
Legitimization of non-action (why is action not necessary? Which boundaries are set to action?)

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560 Based on the analytical matrix used for the VEIL-project (2006-2009), which itself was based on the matrix developed by Verloo (2005) for the Mageeq-project (2003-2007).
Nederlandstalige Samenvatting
Framing de hijab. The regulering van kruisende religieuze, etnische en gender verschillen in Frankrijk, Nederland en Duitsland

Dit proefschrift gaat over de politieke debatten en het beleid omtrent vrouwelijke Islamitische kledij in Frankrijk, Nederland en Duitsland, oftewel de hijab. Hoewel er al veel onderzoek is gedaan naar de vraag waarom de hijab in het publieke en politieke debat zo veel stof doet opwaaien, bestaat er maar weinig internationaal vergelijkend onderzoek. Dit is opmerkelijk, aangezien landen nogal uiteenlopend beleid hebben gevormd ten aanzien van de hijab. Zo verbiedt Frankrijk het dragen van hoofddoeken en andere ‘opzichtige’ religieuze tekens op openbare scholen, terwijl hoofddoen inmiddels een bekend fenomeen zijn op de meeste Nederlandse scholen. Door de beleidsprocessen rond de hijab in drie Europese landen systematisch met elkaar te vergelijken, probeert dit onderzoek de verschillen in beleid te verklaren, en zodoende een bijdrage te leveren aan het wetenschappelijke debat over dit onderwerp. Hiervoor heb ik alle parlementaire debatten rondom de hijab bestudeerd die zich voordeden tussen 1985 en 2007 (en in minder detail ook latere debatten). Daarnaast heb ik de jurisprudentie en verschillende mediastukken rondom dit thema bestudeerd, mede om de actoren te achterhalen die geprobeerd hebben het beleid te beïnvloeden.

Internationaal vergelijkende studies naar de regulering van Islam in Europa wijzen uit dat nationale tradities van staat-kerk verhoudingen en van burgerschap doorwerken in de manier waarop landen omgaan met hedendaagse multiculturalie vraagstukken. Dit onderzoek bouwt voort op deze theorie, maar levert ook twee centrale punten van kritiek:

1. een statisch begrip van nationale beleidstradities kan niet verklaren waarom de hijab soms binnen hetzelfde land verschillend wordt gereguleerd, of waarom er zich over de tijd heen verschuivingen voordoen in het beleid. Blijkbaar zijn deze nationale tradities zelf ook aan verandering onderhevig en voor meerdere interpretaties vatbaar. Daarom stel ik een dynamischere verklaring voor die rekening houdt met de rol van actoren in beleidsvormingsprocessen, en de betekenis die zij geven aan deze historische tradities.

2. De hoofddoek is niet alleen een uitdrukking van een religie die (voornamelijk) door nakomelingen van migranten wordt aangehangen, maar ook een genderspecifieke praktijk die alleen voor vrouwen geldt. Daarom heb ik niet alleen gekeken naar de mogelijke invloed van nationale staat-kerk tradities en immigratie- en integratiebeleid op politieke debatten over de hijab, maar ook naar het emancipatiebeleid van de verschillende landen.

In dit onderzoek wordt een theoretisch model ontwikkeld en getoetst dat de drie genoemde beleidsterreinen opvat als ‘politeieke mogelijkheidsstructuren’ (POS). De thesis is dat nationale verschillen in beleid en instituties van invloed zijn op de mate waarin, en manier waarop, Franse, Nederlandse en Duitse actoren de hijab kunnen thematiseren als een beleidsprobleem. Naast deze drie specifieke elementen van de POS, en de historische breuklijnen die daaraan ten grondslag liggen, heb ik onderzocht in hoeverre verschillen in het politieke systeem tussen de drie landen doorwerken op beleidsprocessen, inclusief politieke machtsverhoudingen. De totstandkoming van beleid wordt breed opgevat als het resultaat van een dynamisch proces tussen actoren die, gekenmerkt door verschillende machtsposities, ideologieën en belangen, twisten over de definitie van het ‘probleem’ van de hijab en de manier waarop de staat daarop zou moeten reageren (‘framing’).

Deze kenmerken van de politieke context vergelijk ik tussen de drie landen in hoofdstuk 3 tot en met 6. Er blijken een aantal duidelijke verschillen te bestaan in de
manier waarop Frankrijk, Nederland en Duitsland in het verleden om gegaan zijn met religieuze, etnische en genderverschillen. Zo laat hoofdstuk 4 zien dat in Frankrijk historische conflicten tussen secularisten en de Katholieke kerk slechts recentelijk zijn gepacificeerd, en dat het overheidsbeleid er nog steeds op gericht is om religie zo veel mogelijk uit openbare instellingen te weren. In Duitsland en Nederland daarentegen, bestaat er al geruime tijd een vreedzame verhouding tussen verschillende religieuze en/of niet-religieuze groeperingen. De openbare rol van religie in de samenleving wordt hier erkend en gewaardeerd, met het verschil dat in tegenstelling tot Nederland kerken in Duitsland een publiekrechtelijke status hebben die hun verschillende voordelen verleent boven minderheidsreligies.

Hoofdstuk 5 toont aan dat, ondanks recente trends van convergentie, er eveneens verschillen bestaan in het type integratiebeleid dat de drie landen hebben gevoerd. Terwijl Frankrijk al meer dan een eeuw geleden, en Nederland een halve eeuw geleden, het staatsburgerschap openstelde voor afstammelingen van migranten, wierp het Duitse burgerschapsbeleid tot 2000 hoge grenzen op voor niet-etnisch Duitse migranten en hun nakomelingen. Daarbij speelt mee dat, in tegenstelling tot Frankrijk en Nederland, conflicten over de letterlijke en symbolische grenzen van de Duitse natie tot voor kort nog niet waren gepacificeerd, mede vanwege de scheiding tussen Oost en West. Ook kennen Frankrijk en Nederland een sterkere antidiscriminatie wetgeving dan Duitsland, met het verschil dat Nederland in de jaren '80 heeft gespeeld met het multiculturalisme als beleidsparadigma en Frankrijk juist huiverig staat tegenover de erkenning en institutionalisering van etnische verschillen.

Op basis van deze elementen van de POS verwachtte ik dat in Frankrijk de hoofddoek het meeste controversieel zou zijn in instellingen als de openbare school, en dat er daar meer discursieve ruimte zou bestaan om te pleiten voor een verbod op alle religieuze uitingen dan in de andere twee landen. In Duitsland verwachtte ik op basis van zijn staat-kerk verhoudingen een grote tolerantie voor religieuze uitingen, maar alleen zolang deze de religie van etnische meerderheden uitdrukken. Het exclusieve burgerschap en integratiebeleid dat Duitsland jarenlang heeft gehanteerd zou kunnen betekenen dat de hoofddoek juist wordt geweerd uit het openbare leven. In Nederland verwachtte ik dat de institutionele mogelijkheden minder kansen zou bieden om voor een verbod te pleiten, hoewel recente veranderingen in het immigratiebeleid en in politieke machtsverhoudingen weer nieuwe mogelijkheden scheppen voor tegenstanders van de hijab.

Tenslotte heb ik in hoofdstuk 6 de gender instituties en het emancipatiebeleid van de drie landen vergeleken. Alle drie landen hebben impliciet en expliciet genderrollen van moederschap geïnstitutionaliseerd, met als koploper Duitsland en dan Nederland. Frankrijk heeft een sterker gelijke kanssenbeleid ontwikkeld dan Duitsland, maar in de Franse politiek zijn vrouwen juist weer minder sterk vertegenwoordigd dan in Nederland en Duitsland. Vanwege de nog steeds sterke mobilisering rondom gendergerelateerde kwesties in Frankrijk, waar inmiddels een uitgebreide emancipatie infrastructuur bestaat, verwachtte ik hier een grotere invloed van de vrouwenbeweging op het debat over de hijab dan in Nederland en Duitsland, waar de beweging is gefragmenteerd en de infrastructuur afgebrokkeld.

In hoofdstuk 7, 8 en 9 ben ik nagegaan of deze aannames kloppen door per land in detail en door de tijd heen te onderzoeken hoe de hijab als probleem werd gepresenteerd in het parlementaire debat, en welk beleid er is ontstaan. In hoofdstuk 10 heb ik de
verschillen en overeenkomsten nog eens naast elkaar gezet. Het blijkt dat de politisering
van de hijab en beleidsreacties in grote mate overeenstemmen met de verwachtingen op
basis van de POS. In Frankrijk was de hoofddoek van leerlingen inderdaad al vroeg
controversieel. Hoewel deze aanvankelijk werd getolereerd, mede vanuit de verwachting
dat zodra migrantenkinderen zouden integreren ze hun hoofddoek zouden afleggen, kregen
scholen al snel toestemming de hoofddoek te verbieden. In 2004 is er een wettelijk verbod
op religieuze kledij doorgevoerd, welke met het argument om meisjes te beschermen tegen
religieuze druk en om de eenheid van de natie te bewaken. In tegenstelling tot Frankrijk,
waar de mogelijkheid om hoofddoeken voor leraressen en ambtenaren niet eens werd
overwogen, zijn deze in Nederland toegestaan. Een verbod werd lange tijd als
discriminatoir en contraproductief gezien voor de emancipatie en integratie van
migrantenvrouwen. Recent zijn er slechts in bepaalde domeinen als de school verboden op
de gezichtssluier ingevoerd, welke als een obstakel voor integratie en gendergelijkheid
wordt beschouwd, net als in Frankrijk waar gezichtssluiers zijn verboden in de gehele
openbare ruimte. Duitsland neemt een bijzondere positie in: vijf deelstaten verbieden de
hoofddoek, maar nonnen en joodse leerkrachten wordt wel toegestaan om in hun kleding
uitdrukking te geven aan hun religie. De argumentatie is dat hoofddoeken een uitdrukking
zijn van een extremistische Islam, dus een politiek statement dat conflicteert met Joods-
christelijke waarden.

Toch blijken er binnen landen verschillende beleidsreacties ten aanzien van de hijab
ten aanzien van de hijab te bestaan, welke moeilijk vanuit ‘nationale’ beleidsradities zijn te verklaren. Niet alleen
laat het Franse voorbeeld zien dat er beleidsverschillen over de tijd ontstaan, ook de
verschillen in beleid tussen de deelstaten in Duitsland roepen om aanvullende verklaring (3
andere deelstaten verbieden alle religieuze uitingen in plaats van alleen de hoofddoek, en 8
delestaten hebben geen of accommoderend beleid). Daarnaast bestaan er overeenkomsten
binnen de landen die moeilijk te verklaren zijn vanuit de POS. Zo blijkt dat de hijab in alle
landen steeds meer wordt geopolitiseerd. Hoewel de controverses zich per land op
verschillende vormen van sluiering richten en op verschillende domeinen, is de trend naar
restrictief beleid overal zichtbaar. Ook zien we overeenkomsten tussen landen in de
probleemanalyse, namelijk dat de hijab wordt gerelateerd aan segregatie en publieke orde,
Islamitisch extremisme, of aan vrouwenongelijkheid.

Deze overeenkomsten kunnen slechts gedeeltelijk worden verklaard aan de hand
van twee met elkaar samenhangende elementen van de POS: enerzijds spelen
veranderingen in beleidsparadigma’s van burgerschap mee, anderzijds verschuivingen in
machtsconstellaties. De opkomst van Rechts in Frankrijk en Nederland, en de sterke positie
van nationalistische partijen in Duitsland, is van invloed op de framing van bestaande
partijen, die gedeeltelijk meegaan in de probleemanalyse dat de hijab staat voor
vrouwenonderdrukking, religieus extremisme en segregatie. Echter, om de resonantie van
dit soort frames te begrijpen spelen niet alleen nationale mogelijkheidsstructuren een rol,
zoals de bedreiging die uitgaat van populistische c.q. rechtse partijen voor bestaande
machthebbers, maar ook incidenten binnen en buiten de nationale grenzen zijn van belang,
zoals de moord op Theo van Gogh of de aanslag op het WTC in 2001. De diffusie van een
internationaal vertoog dat geweld linkt aan Islam en aan de falende integratie van
migranten creëert nieuwe mogelijkheden voor voorstanders van een verbod op ‘politieke’
symbolen, zoals de hijab. De uiteindelijke beleidsreactie blijft echter vrij landenspecifiek.
In het conclusie hoofdstuk betoog ik daarom dat beleidsprocessen weliswaar plaatsvinden in een nationale context, en daardoor mede worden beïnvloed door institutionele repertoires en historische beleidstradities, maar dat deze processen dynamischer en veranderlijker zijn dan statische, structuralistische theorieën suggereren. Allereerst, de dynamiek tussen actoren en de opkomst van nieuwe uitdagers blijkt van groot belang in de discursieve strijd rondom thema’s als de hijab en is daarmee, naast beleid en instituties, van groot belang om de uitkomst van beleidsprocessen te verklaren.

Ten tweede laat mijn analyse zien dat actoren verschillende betekenissen kunnen geven aan hun institutionele omgeving. Terwijl Duitse conservatieve partijen zichzelf als een Christelijke natie beschouwen en daarom partieel verboden op de hoofddoek in lijn vinden met hun tradities van staat-kerk, beargumenteren de meeste linkse partijen hier dat dergelijke verboden indruisen tegen het geïnstitutionaliseerde principe van strikt gelijke behandeling. Vanuit datzelfde principe van (gender)gelijkheid, pleiten sommigen echter voor een verbod op de hoofddoek. Door de manier waarop actoren de hoofddoek thematiseren, spreken ze dus andere elementen van hun institutionele omgeving aan en andere actoren die als partners kunnen fungeren in hun strijd. Zodoende creëren actoren zelf mogelijkheden om een bepaald beleid door te voeren. Kortom, de invloed van instituties op beleid wordt bemiddeld door het politieke proces, waarin er volop ruimte bestaat voor de ‘agency’ van actoren. Er bestaat dus een interactie tussen instituties en actoren, waarbij framing als de lijm fungeert.

Ten derde, in hun mobilisering rondom een thema vinden actoren ook mogelijkheden buiten de grenzen van de natiestaat. Naast de diffusie van internationale vertogen rondom Islamitisch extremisme, blijkt dat vertogen over internationale mensenrechten als normatief raamwerk hebben gefungeerd in de strijd rondom de hijab. Tegelijkertijd laat mijn analyse zien dat de invloed van instituties als de EU op nationaal beleid beperkt is gebleven. Het onderzoek toont aan dat het Europese Hof van de Rechten van de Mens een behoorlijke ruimte aan lidstaten laat om beleid te voeren dat past binnen hun nationale beleidskaders, waardoor geïdealiseerde tradities van burgerschap en van staat-kerk verhoudingen de inzet worden van een strijd om cultuur en machtheboud.

Tenslotte laat mijn analyse zien dat de uitkomsten van de discursieve strijd rondom de hoofddoek niet verklaard kunnen worden door alleen één van de drie beleidsterreinen. Zo zou je immers tolerant beleid verwachten in Duitsland waar religie een openbare rol heeft genoten. Door de hoofddoek als een symbool van segregatie en vrouwenonderdrukking te presenteren dat botst met nationale waarden, kwamen ook andere beleidsparadigma’s in het geding, zoals het restrictieve naturalisatie- en integratiebeleid en het zwakke gendergelijkheidsbeleid van Duitsland. Bovendien ontstonden er door deze representatie van het probleem historisch onverwachte allianties tussen conservatieve partijen en feministen die beiden voor een verbod op de hoofddoek pleitten, welke in 8 deelstaten werd doorgevoerd. In andere woorden, door de specifieke manier waarop gender, etniciteit/ras’, nationaliteit en religie aan elkaar worden gelinkt, worden er instituties, actoren en beleidsstrategieën aangesproken die samengaan mogelijkheden creëren voor actoren om zich hard te maken voor een bepaalde beleidsreactie. Deze bevinding pleit voor een dynamischere, procesmatigere en een ‘intersectionele’ benadering van beleidsanalyses rondom een thema als de hijab, een paradigmatisch voorbeeld van een gelijkheidsclaim waarin religieuze, etnische en gender verschillen elkaar kruisen.
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