

**Multicultural Jurisprudence:
Muslim Immigrants, Culture and the Law in France and Germany**

Sylvia Maier, PhD
Assistant Professor
Sam Nunn School of International Affairs
Georgia Institute of Technology
Atlanta, GA 30332-0610
sylvia.maier@inta.gatech.edu
Phone: 404-385-2829

Paper prepared for presentation at the Council of European Scholars Conference, Chicago, IL,
March 11-13, 2004

Suggestions and Comments Welcome!

© Sylvia Maier 2004

Introduction

In this paper I analyze the extent to which France and Germany protect the cultural rights of minorities, and domestic courts safeguard specific cultural-religious traditions of immigrant Muslim communities that are considered constitutive of their way of life. I address this issue on the basis of two case studies, each of which represents a central cultural concern to many members of the Muslim minorities in both countries: Muslim family law and the right of Muslims girls and women to wear the *hijab* [Islamic headscarf] to school or work. I argue that the civic self-definitions of France and Germany are mirrored in the inconsistent, haphazard responses to and selective protection of cultural minority traditions. Thus, based on the evidence provided in my case studies, I contend that a more equitable framework for multicultural accommodation is needed. While there are certainly no magical formulas, I conclude with a few suggestions for such an improved approach.

I. Immigration, Integration and Multiculturalism in France and Germany

The lives of strangers are the best mirrors in which to recognize ourselves.
Goethe to Charlotte von Stein

Introduction

In order to comprehend the national psychodramas the so-called *affaire de foulard* [the Islamic headscarf affair], for instance, has engendered in both countries and the resistance the idea of comprehensive cultural rights for immigrant minorities still generates, it is necessary to understand the national self-definitions of France and Germany and their consequences for the realization of a culturally pluralistic society. I will sketch those national theories, taking into account any changes in response to political developments. What will become apparent are the *prima facie* differences in their respective civic self-definitions yet the factual similarities in the actual policy formulations, goals and outcomes of their modest pluralism projects.

France and Germany are usually viewed as representatives of two opposing models of immigration and integration (Brubaker 1996, 1992; Falga et al. 1994; Freeman 1995; Van Nahme 1993). France is considered the classic territory of integration--the *Creuset Français* [the French Meltingpot] (Noiriel 1988)--thanks to a combination of a long state tradition of welcoming exiles and immigrants, a liberal political ideology with no overt ideological distinctions between citizen and non-citizens, equally liberal immigration laws, and a dual *ius sanguinis/ius solis* legislation that allows for the facile acquisition of citizenship, and, thus, membership in the French polity (Falga et al, 1994, 12; Brubaker 1992, 81-2).

Germany, on the other hand, is viewed--actively fostering that image herself until recently--as a country that defines membership in its polity exclusively along "organic," that is, "blood" lines, institutionalized in the legal principle of *ius sanguinis*, and resisting the social and political integration of culturally different individuals and groups (Brubaker 1992, 81-2; Frank 1995, 17, 26; Jacobson 1996, 21). In other words, the French understanding of nationhood is state-centered and assimilationist, whereas Germany's is ethnocultural and "differentialist" (Brubaker 1992, xi, 114-37; Falga et al. 1994, 11-33, 193-213; Frank 1995; Jacobson 1996, 21;

Van Nahme 1993). These characterizations, as the subsequent case studies will show, are, by and large, in this form still accurate and the predominant parameters informing the formulation of public policies on cultural rights.

The French and German Models of Integration

The contemporary French civic self-definition was formed in the second phase of the French Revolution, from 1793 to 1795. This period, which replaced the liberal constitutional phase of the Revolution that had been led by politicians such as Mirabeau, overthrew the monarchy and had given France a comprehensive system of civil and political rights, witnessed the formal institutionalization of the radical (communitarian) Jacobin interpretation of civic republicanism (Favell 1998, 40-94; Higonnet 1998; Jacobson 1996, 22-3; Weil 1988).

Following Rousseauian ideals of a moral republican order based on the *volonté générale*, this Jacobin republicanism needs to be understood as a direct reaction to the detested Catholic conservative, despotic, strictly stratified, fissured social and political system of the *ancien régime* that had made participation in the polity dependent on birth, status or income. Because of these stratifications, the old regime had become weak, degenerated, corrupt, corroded, the laughing stock of Europe, so the Jacobin view (Higonnet 1998, chaps. 4-8 and 10; Hunt 1984). A *regénération*, a new beginning, could only be possible under a radically reformed mode of government, and the corresponding idea of national citizenship and civic self-definition. The nascent republic needed to be united in spirit and goal, free from factional crosscutting identities, like religion or ethnicity, that had ruined the old France. Under this model membership in the national community would involve an absolute commitment to the Republic and its foundational core values, *égalité* and *laïcité* [equality and secularism]. Religious, ethnic, linguistic, regional, subcultural and other ascriptive identities were acceptable *per se* but had to be relegated to the private sphere (Higonnet 1998; Ireland 1996, 34). On rights for Jews, for instance, the Abbé Grégoire said: "Every right to them as individuals, but no rights to them as a group." By that he meant that there would be no special governmental accommodation provisions for religious or ethnic groups to ensure their continued existence but that individual members of these groups would enjoy the exact same rights as any other French citizen, regardless of their previous history. On a public policy level, then, there would be no official recognition, positive or negative, of private idiosyncratic identities as would be expressed in the funding of parochial schools, special language rights, publications in languages other than French, religious cemeteries, or symbolic acknowledgements of other ethnicities or religions (Safran 1985, 221). All Frenchmen were to be equal citizens with an equal commitment to the same values.¹ In order to ensure the instillation of these values, *égalité* and *laïcité*, from as early a period on as possible, laws, public policies and, particularly, schools would take on a special culturally unifying role. Nationalized education would ensure that children from the youngest age on would be assimilated into this unitary culture of fraternity, secularity and equality.² Furthermore, the army and public service would serve as integrative institutions. Eugen Weber (1976) gives an excellent example for this assimilationist policy in his seminal study *Peasants into Frenchmen*. Immigrants, refugees and foreign workers (regardless of their background) were gladly received, in fact, highly desired by the French businesses, but, in exchange for becoming French citizens, they had to be ready to renounce their ethnic heritage and accept the French culture, traditions

¹ See particularly Rogers Brubaker. 1992. *Citizenship and Nationhood in France and Germany*. Cambridge, MA and London, England: Harvard University Press. Chapter 2.

² It is difficult to overstate the central importance of schools for the republican model of integration in France. This centrality of a secular educational environment was the main reason why the conflict about the *hijab* was so violently acrimonious - it struck directly at the heart of the French center of assimilation/republicanism.

and values unequivocally (Brubaker 1992, 8, 47; Jacobson 1996, 22; Noiriel 1988). In short they had to assimilate completely, or would not be welcome in France (Brubaker 1992, 14, 47; Guiraudon 1996, 48; Hargreaves 1995, 31; Koopmans 1999, 661). Fundamentally, the understanding existed that all immigrants were capable of this kind of assimilation, and, it was assumed--rightfully or not--that everybody on French soil would want to do so.³

While France is demarcated by its territorial and institutional boundaries, Germany organized herself along preexisting ethnic ties through a process of mobilization in response to internal and external armed conflicts in the nineteenth century. As such, she is the quintessential "ethnic nation" (Jacobson 1996, 21) which established a sense of nationhood first and, based on this conception created the corresponding institutions and state structures later. This "nation to state" model (Jacobson 1996, 22), as expressed in laws and policies, stresses folkish concepts of the nation and a common blood descent is emphasized (Brubaker 1992, 114-137). Customary and linguistic ties define the common markers of nationhood, and unlike in France, legal codes and institutions are not the basis for bonding the nation (Jacobson 1996, 22). As the French were swept up in their Revolution espousing rationalistic, universalist values of liberty, equality and fraternity, attempting to export them Europe by armies,⁴ German nationalism and the idea of an organic nation, a *Volk*, arose in the context of these Napoleonic wars. Germany represented a nation in search of a state and a protest against the rationalist and cosmopolitan beliefs of the French Revolution. In contrast to the French values of universalism, secularity, and equality, the German nationalism developed a *völkisch* and particularistic character. German nationhood, promoted by philosophers like Fichte, Hegel and Schlegel, was rooted in the concept of the people as an organic cultural and racial entity marked by a common language. German nationalism having preceded the political organization of the nation-state was therefore not identified with the state or citizenship. Instead, German national consciousness evolved from a preexisting cultural heritage (Brubaker 1992, 51; Jacobson 1996, 24). As such, the state is the representation of the *Volk*, and not, as in France, the nation the representation of state values and institutions.

Consequently, the attitude towards immigrants and cultural minorities, regardless of their willingness to assimilate into German culture, must be, by definition, negative (Budzinski 1999, 37; Frank 1995, 19).⁵ Individuals of non-ethnic German origin are considered never to be able to really become part of the German organic *Volkskörper* [national body], and, as such, are unwelcome, as threats to the ethnically determined cultural unity of the nation (Budzinski 1999, 31-4; Frank 1995, 19). There is no political culture supporting any kind of naturalization. While this German civic self-definition, best exemplified by its restrictive citizenship and naturalization laws, has undergone some changes in recent years (Budzinski 1999, 64-5; Frank 1995, 86-107), it still informs the contemporary public policies and attitude toward ethnocultural minorities.

French and German Reactions to Their Newly Diverse Societies

³ Certainly not everybody agreed with this assessment. Foreshadowing the contemporary debate, rightists in the nineteenth century were still intellectually firmly entrenched in the organic conception of French nationhood and convinced that "non-European Jews and other non-Christians could not be considered fully French," no matter how comprehensive the assimilationist policies were (Safran 1991, 221). Nonetheless, there was no general serious debate about the moral and practical value of this assimilationist republican model, especially as ethnic, religious and linguistic strife had largely been successfully suppressed.

⁴ The so-called "*mission libératrice et civilisatrice*." (Brubaker 1992, 11)

⁵ This is clearly expressed in the administrative regulations governing naturalization, which state unambiguously that "the Federal Republic is not a country of immigration [and] does not strive to increase the number of its citizens through naturalization." (Brubaker 1992, 77)

The demographic landscape of Europe has changed considerably since the end of World War II. What used to be fairly homogeneous societies have now become ethnic mosaics, with immigrants joining their European neighbors in record numbers. Most of the newcomers hail from North Africa and the Middle East, with Islam now being the second largest religious community, after Christianity, with approximately twenty-three million followers (Peach and Glebe 1995, 26). European countries have reacted in vastly different ways to the challenges and opportunities afforded by this new social constellation (Budzinski 1999, 44-66, 227-99; Frank 1995; Kepel 1994; Schnapper 1991). Some have built on their long tradition of tolerance, like the Netherlands and Great Britain (Bartels 1989; Firley 1997; Poulter 1998, 1996, 1995, 1994, 1992, 1987, 1986; Shadid and Koningsveld 1996; 1995, 1992, 1991) and made easy accommodations for the new minorities in their midst. Others, such as France and Germany, have had more difficulty adjusting their social policies to the realities of the new cultural diversity of their countries (Brubaker 1996, 1992; Feldblum 1999, 20-9; *Haut Conseil à l'Intégration* 1992, 13-7; Rude-Antoine 1992; Schnapper 1991), embarking on a balancing act, torn between prejudice and the practical need for a *modus vivendi* (Budzinski 1999; Gebauer 1999; Kelber and Will 1993; Mecheril and Teo 1994; White 1997).

In Germany, the Muslim community counts between 1.6 (officially) and 2.7 million members (polls by immigrant groups) out of a total population of 70 million. The number of Muslims in France is generally put at about 3.5 million people (Feldblum 1999, 14, 22). This number comprises first-generation immigrants from predominantly Muslim countries in the Maghreb and Sub-Saharan Africa, which make up approximately 50% of the total rate (Cessou 1995, 63-4; Hargreaves 1995, 79), and their approximately one million descendants. In conjunction with about one million residents from European countries, the foreigner rate in France stands now at about 7% of a total population of roughly 59 million (Cessou 1995).⁶

The French Response to a Newly Multiethnic Society

In France, on a political as well as social level, the position of the Jacobin model of an assimilatory republicanism remained virtually unchallenged from its inception in the late eighteenth century until immigration from former French colonies in the Maghreb and Sub-Saharan Africa was considered to have reached a critical mass in the late 1970s and the visibility of other cultural traditions, ranging from different languages, garbs, family structures, to physical characteristics increased markedly, particularly in the metropolitan areas of Paris, Marseilles, and Lyons (Hargreaves 1995, 77; Ireland 1996, 35; Weil 1991, Part I). This immigrant population made up mainly of unskilled, cheap laborers from the former colonies, showed no signs of following the French model of assimilation into the French culture. The reasons for this were manifold. For once, laborers who had come without families were essentially isolated from French civic life. Second, their ability to speak French was generally poor and was not improved as they worked in ghetto-like businesses areas with their fellow countrymen and had little opportunity to practice the French language. Third, in a helpless expression of passive resistance against the dominant society that despised them, many immigrants kept closely to their rich cultural ties and traditions in self-protection (Hargreaves 1995, chap. 3). The inevitable social tensions in some particularly poor areas reached such critical proportions that when François Mitterrand and the Socialists took power in 1981, they had to act swiftly and decisively, with unorthodox approaches to this multicultural reality, that were still considered politically

⁶ For comprehensive numerical data on Muslims in Europe, see Peach and Glebe 1995. Despite these relatively actual low ratios, in surveys, non-immigrant residents consistently overestimate the number of foreign residents by 2 to 5% (Feldblum 1999, 45).

blasphemous at the time (Feldblum 1999, 32-4; Safran 1985, 41-2). To be sure, during Giscard's presidency public policies fostering cultural separation rather than assimilation had already been encouraged. They, however, were meant to help reverse migration flows and keep immigrants depoliticized and not to aggressively promote cultural diversity. For instance, the French government fostered and funded Muslim prayer rooms for foreign workers in factories to compete with union cells. Home-language classes were introduced in schools to preserve a link between foreign families and their countries of origin (Guiraudon 1996, 50).

With Marcel Long and François Mitterrand at the helm, the French Left had been at the forefront of a new intellectual approach to cultural diversity already in the 1960s. Moreover it decided to take the debate about immigration as a cause for a broader redefinition of societal relationships. As a consequence, it tinkered with the actual practice of assimilation and allowed for greater cultural pluralism (Feldblum 1999, 32-34; Giordan 1982; Safran 1985, 43-50). Instead of assimilation, the new keyword was *insertion* (Basson 1996, 3; Favell 1998, 46-50; Hargreaves 1995, 195-6; Weil 1991, 141-51). As Weil and Crowley note: "When the social condition of marginalized foreigners was taken up by the left-wing parties, there was no question of demanding assimilation, the connotations of ethnic superiority which were frequently related to imperialism and fascism" were unacceptable (Basson 1996, 3-4).

The term *insertion* was used to refer to the right to maintain collective cultural differences within the context of French society. Still, let there be no mistake - insertion referred mainly to the right to be, behave and look differently, but it did not change the essence of basic public policies. The fundamental self-understanding was still that of a French melting pot and not that of a "salad bowl." Ethnic and religious groups, particularly Muslims, still did not receive much public funding beyond what was due to them by law as representational organizations. Muslim girls still were not allowed to wear the *hijab* to school. In other words, the government was not committed to taking affirmative steps to nurture the continued existence of ethnic cultural traditions: native-language instruction of immigrant school children languished half-heartedly, not one state-funded Islamic school exists in France. Until 1991, Muslim radio shows received much less airtime than Jewish or Christian denominations (fifteen minutes, which were later raised to thirty), and the only Muslim radio-station was not licensed until 1994, after it had been hand-picked for its religious moderation. Furthermore, it was not until the early 1990s that the first training facilities for imams were established in France (Hargreaves 1995, 123-4). On a private law level, polygamy was tolerated, but it was not recognized as a right nor as an option for marriage in France (Gillette-Frénoy 1993a, 1993b; Rude-Antoine 1992). Even for national minorities, such as the Corsicans or the Bretons, it was extremely difficult to obtain funding for their media (Safran 1985, 60-3). Nonetheless, though, the new government implemented more liberal policies towards family immigration almost immediately and strengthened the immigrants' protection against administrative abuses and extending the right of association to immigrants (Ireland 1996, 36; Soysal 1994, 104-7).⁷ The Socialists had become committed advocates of their version of cultural pluralism.

These new laws and policies gave a boost to immigrant associational activity and the number of associations grew to 4,200 by the mid-1980s (Ireland 1996, 36). Some of them began to demand greater freedom of political expression and more respect for their ethnic, national or regional cultural identity (Feldblum 1999, 34-6; see also Anon. 1999a). All the while the forces of marginalization gathered strength, affecting the second generation of immigrants in particular.

⁷ The right to association is usually cited as the best example of this new policy of *insértion* (Basson 1996, 4). For a more extensive presentation of the effects of this new right, see Yasemin N. Soysal. 1994. *Limits of Citizenship. Migrants and Postnational Membership in Europe*. Chicago and London: University of Chicago Press.

The seemingly "unmeltable" sons and daughters of these immigrants--*les bleu, blanc, beurs* (Kepel 1994, 64; see also Anon. 1999a)--cast serious doubts on the assimilative powers of the French system. Stuck in the same menial jobs as their parents, unemployed and/or in unsatisfactory family circumstances yet being "from France," they found themselves in a cultural limbo, rebelling against the traditional culture of their parents as well as against the mainstream culture that rejected them (Basson 1996; Guiraudon 1996, 48; Wihtol de Wenden 1991, 33; Shadid and Koningsveld 1991, 174-87; Shadid and Koningsveld 1992, chap. 5).

Not exactly unselfishly, the French political class then directed most policies towards these young *beurs*, which they saw as making radical Islam the rallying point for their political mobilization, testing severely the limits of the new tolerance in France (Hargreaves 1995, 125; Ireland 1996, 39). While it is correct that Islamic institutions made particular inroads in schools, factories, sports clubs, welfare offices, and mosques, it is by no means the case that the young *beurs* rejected the French political system or republican values (Van Zanten 1997, 351, 357) - the enforcement of the model still produces the desired manifestations.⁸ Only about one third consider themselves believing Muslims, the rest consider themselves "Muslim atheists," thereby transforming their religious affiliation into the indication of an ethnic belonging (Hargreaves 1995, 121; Silverman 1992, 14-5), mythologizing the Arab world. Islam has become for these youngsters mainly a battle cry, a bargaining tool in their painful process of integration through protest (Basson 1996, 5; Schnapper 1991; Van Zanten 1997, 368).

At the same time, anti-racist activists took up this new governmental policy and incorporated the notion of *insértion* in their platform as well and the 1983 *Marche de Beurs* from Paris to Marseilles was organized around the theme of the collective *droit à la différence* [the right to difference] (Feldblum 1999, 34-6). In an ironic twist of fate, though, the right-wing extremist *Front National* (FN), led by convicted Holocaust denier Jean-Marie Le Pen, used the term for their own purposes. The "right to difference" was to mean that these cultural differences would make it easier to distinguish immigrants from French nationals and thus justify their deportation from France (Basson 1996, 4; Feldblum 1999, 36-40, 69). This misuse, so Taguieff (1987) created a dilemma for multiculturalists. Since the extreme right had usurped their argument and slogan, these had to be changed and antiracists could no longer celebrate difference confidently.

Political supporters of the immigrant population faced with a more ambivalent Socialist government that itself was confronted with a rising nativist right-wing movement in the form of the FN, responded in 1986 by adopting the concept of *intégration* which implied that immigrants should have equal civil and political rights in French society (Schnapper 1991, 4) instead of being accorded culturally differentiated group rights. It was also during that period that many in the association movement visibly moved from this differentialist pluralism to embrace different forms of cultural pluralism and, in an embrace of traditional Jacobin republican values as the best form of co-existence, engaged again in French-centered integration (Feldblum 1999, 48; Leruth 1998, 49; Safran 1990).⁹ This process was greatly accelerated by the so-called headscarf affair in

⁸ Schnapper (1991) strongly disputes the claim that the republican model of integration still fulfils its historical role successfully.

⁹ What was remarkable at the time was that as the main spokesperson of the immigrant associations, Harlem Désir from *SOS Racisme*, defined this new model of equal rights and cultural pluralism in terms of the French national terrain and the justificatory image of the international antiracist human rights network (Feldblum 1999, 48). It was the first, and, to the best of my knowledge, only time that international norms were invoked to justify pluralist policy approaches in France.

⁹ For comprehensive numerical data on Muslims in Europe, see Ceri Peach, and Günther Glebe. 1995. "Muslim Minorities in Western Europe." *Ethnic and Racial Studies* 18 (1): 26-45.

Creil in 1989 in which many saw embodied an attack on the secular French school system, and, by extension, the entire French republican system. This controversy forced the nation as a whole to re-examine the role of the immigrant and Islam in French society. While the right of Muslim girls to wear the headscarf to public school was granted by the courts (not by the legislature), the right to polygamous family reunification was abolished in 1993, and offenses against the legal prohibition of FGM were strictly enforced. Furthermore, citizenship and naturalization laws were considerably tightened, for the first time abolishing the right to automatic French citizenship for second-generation immigrants (Costa-Lascoux 1994; Philippe 1994).¹⁰ Interior Minister Pierre Joxe encouraged the selection of moderate imams and the development of a national consistory to provide the government with a reliable intermediary with the Muslim community (Ireland 1996, 41). Many on the French Right saw their position against cultural pluralism vindicated, and, in fact, few more efforts were made to expand on the diversity model for French society. The French pluralism project has, in effect, ground to a halt.

The most important feature of current French politics lies in its increased mythologization of its Jacobin past, and, in its neo-republican discourse on French identity, France has explicitly reaffirmed the traditional model of individual assimilation (Guiraudon 1996, 47; Ireland 1996, 41; Leruth 1998, 49-60; Taguieff 1995, 13-22, 25; Safran 1990). Since the Islamic headscarf affairs in 1989 and 1994, a clear policy commitment shared by the Left and Right alike has emerged in favor of co-opting organizations representing the Muslim population in France into a constructive dialogue with the state instead of fostering pure cultural and legal pluralism with collectively empowered identity groups. The aim is to weaken the potential for Islamic fundamentalism, which it regards as a threat, by fostering organizational structures and religious practices which are compatible with French law and the spirit of *laïcité* (Hargreaves 1995, 207; Shayegan 1990; Taguieff 1994):

We need to treat Islam in France as a French question instead of continuing to see it as a foreign question or as an extension into France of foreign problem It is no longer enough to talk of Islam in France. There has to be a French Islam. The French Republic is ready for this. (Hargreaves 1996, 208)

The French state has long recognized comparable organizations as representatives of the Jewish, Catholic and Protestant communities. Institutions of this kind enjoy tax and other advantages while serving as consultative channels between religious communities and the state, and as authorized go-betweens in such matters as the dispatch of spiritual advisers to hospitals and prisons as well as in the regulation of certain commercial activities, including the preparation of ritually slaughtered meat. Therefore, to extend these institutional structures to Muslims, as it finally happened in 2000, when Minister Chevènement was able to officially register an official representational body for the French Muslim community, was only a matter of non-discrimination and not an exceptional example of an undivided French commitment to cultural diversity (Ternisien 2000). An important element in this strategy is the conviction that most Muslims understand and accept the norms governing religious practices within the French tradition of *laïcité*. In expressing their support for such institutions as the *Grande Mosquée* of Paris whose leadership was appointed by the strongly anti-fundamentalist Algerian government,

¹⁰These immigration laws have since been changed again and the right to citizenship re-established. See, in particular, the outstanding analysis of the political process guiding these citizenship debates in France, by Feldblum 1999. For the text of the law, see Loi n°98-170 du 16 mars 1998 relative à la nationalité. Code Civil #98-170. Decret n°98-720 du 20 août 1998 portant application de la loi n°98-170 du 16 mars 1998 relative à la nationalité et relatif aux déclarations, demandes, décisions et mentions en matière de nationalité française. Code Civil #98-720.

the government hoped to foster among the French Muslim population a moderate form of Islam compatible with the republican tradition of *laïcité* (Hargreaves 1995, 208).

Although what is evident now is less than the full-blown policy of multiculturalism once apparently favored by many on the left, it also falls far short of the intolerant mono-culturalism for which right-wing nationalists traditionally argued. In pursuing a strategy of co-option, governments of both Left and Right have effectively accepted that cultural differences associated with recent migratory inflows are to be accommodated in France provided they are not felt to threaten the basic principles of republicanism and *laïcité*. The evidence suggests that Muslims are indeed internalizing those principles. Therefore, French policymakers reflecting most shades of the political spectrum appear now to be committed to the social incorporation of minorities who continue to display cultural particularities derived from their traditional cultural heritage (Hargreaves 1995, 209).

What is equally evident, though, is that the French government is far away from embracing policies that Levy (1997), Taylor (1994) or Young (1990) have characterized as essential for the protection of cultural minority identities and traditions. French law does not officially support any exemption, representation, language or assistance rights, nor most symbolic rights for immigrant or national minorities. While lipservice is paid to cultural diversity, this is to take place in the tightly circumscribed framework of Jacobin (neo)republicanism. Extremely important in that respect is the French reaction to the international human rights law regime on cultural minority rights. The republican model of integration received direct constitutional protection in Article 1 of the *Constitution de la République Française* which holds that "La France est une République indivisible, laïque, démocratique et sociale. Elle assure l'égalité devant la loi de tous les citoyens sans distinction d'origine, de race ou de religion. Elle respecte toutes les croyances." It was on this precise basis that France entered a reservation with the Secretary General of the United Nations with respect to Article 27 of the ICCPR, the article that established the right to culture for minorities, saying that France would not consider herself bound by this Article because it was by nature indivisible and secular, and would not foster special cultural rights (Alfredsson 1993, 6). Consequently, it was on the basis of this reservation that France rejected several individual communications by Bretons who had sued France for the right to use their Bretonian language as an official language with authorities in Brittany.¹¹ There have not yet been any communications by immigrants demanding the protection of a specific cultural right. We shall see in the following chapters if the French response to *crucial* cultural traditions constitutive of Muslim identity is as checkered as its political commitment to cultural diversity.

The German Response to a Newly Multiethnic Society

It would be a reasonable assumption to make that the experiences of the Third Reich and the horror of the Holocaust might have discredited the *völkische* ideology of German nationhood and changed the Germans' self-understanding as well. Yet this was not the case. Instead, the peculiar circumstances of the immediate postwar period--the total collapse of the state, the massive expulsion of ethnic Germans from Eastern Europe and the Soviet Union (by 1950, 12 million had been expelled) and the imposed division of German--reinforced and powerfully legitimated that self-understanding. Ironically, the ethnocultural moment in national self-understanding was nourished by the massive and brutal postwar expulsions of these German minorities. The post-war reconstruction of citizenship, in conjunction with the establishment of

¹¹ For some of these communications (No. 220, 221, 222, 228, 243, 262/1987, No. 323, 324, 325, 327/1988) see Nowak (1993, 486) and *Reports of the Human Rights Committee* for the years 1989 and 1990.

the Federal Republic of Germany, reflected this self-understanding of a nation without a state (Brubaker 1992, 168-9). Recognizing everyone

as a *German* who holds German citizenship or who as a refugee or expellee of German ethnicity or as a spouse or descendant of such a person has been admitted to the territory of the German Reich as it existed on December 31, 1937. (Article 116, German Basic Law)

This meant that the Wilhelmine citizenship law of 1913, with its system of pure *ius sanguinis* remained in force and became the law of the Federal republic. As a result, almost all residents of the German Democratic Republic and all ethnic German minorities abroad were considered German citizens by virtue of their ethnic ancestry.

Thus, the German self-image and civic self-definition was not seriously challenged until the late 1970s, in the context of the permanent settlement of large communities of Turkish descent who had been hired by the German government as *Gastarbeiter* [guestworkers] in the 1960s to aid in the reconstruction of the German economy (Brubaker 1992, 170-1; Freeman 1995; Thränhardt 1989, 10-1). Migrant workers were recruited from Italy, Greece, Spain, Portugal, Yugoslavia and Turkey. By 1973, there were 2.6 million foreign workers, comprising 11.9% of the labor force and four million foreigners altogether, comprising 6.4% of the population (Brubaker 1992, 171; Doomernik 1995, 46). Until around 1970, nobody thought that this labor migration would lead to settlement on a large scale. The government repeatedly stressed that foreign workers were sojourners, not settlers. Nor did the migrants view themselves as permanent residents. Even today, surprisingly few plan to remain forever (Ehringfeld 1997, 82; Koopmans 1999, 677; White 1997, 755). Yet by the early 1970s, there were already signs of settlement (Doomernik 1995, 48). The average length of stay was increasing and the gender ratio and employment rates were becoming more normal. Combined with a soaring birth rate among migrant families and a decline in the German birth rate, these changes led to an increasing concern with the social aspects of immigration (Frank 1995, 16) and virulent, visceral xenophobia.

The response of the German government to the increasingly multicultural make-up of its society was hesitant, and can roughly be divided into three periods, the initial phase (1980-1983), the second, intermediary, phase (1988-1990/91) and the third, current, phase (Frank 1995, 11-2) all of which were informed, in varying degrees, by the predominant model of ethnocultural differentialist self-definition and corresponding reluctant responses to the awareness of the special needs of a multiethnic society.

One can best characterize the first phase of the debate about a multicultural society as the period of recognition. Initially, regardless of increasing signs of permanent settlement, German government policies towards the migrant population continued to perpetuate the myth of the eventual return of the guestworkers so as to be able to maintain the self-understanding of an ethnically and culturally homogeneous collective. Soon, however, it witnessed the conceptual-intellectual transformation of the "guestworker" into the "foreigner" as the "other" (which it remained to this day) by the political system as well as many intellectuals. The comprehension of this conceptual metamorphosis is crucial. Prior to the official--if still unacknowledged--realization of a possible permanent settlement, the relationship between Germany and the guestworkers was contractual. That meant that no emotional involvement regarding their presence was required (Frank 1995, 17). Migrant communities were simply the tangible expression of a labor contract. As a consequence, it was sufficient to deal with their specific situation with semi-governmental welfare organizations or the social-technocratic bureaucratic machinery in the context of Germany's labor and social welfare obligations (Thränhardt 1989, 15). Additional educational, social or social-political measures were unnecessary and the

ethnocultural unity of German society was not threatened. Once migrants left this functional space, however, Germany realized that their continued, perhaps even permanent, presence would fundamentally change the societal structure and would lead to a questioning of Germany's self-image.

As a consequence, the attitude towards them changed significantly - suddenly migrants were considered a threat, "intruders," and generally deceitful as they had allegedly broken their end of the bargain "good money for hard work" (Frank 1996, 18-19). Residency in Germany had never been discussed as a serious option. Intellectuals, again it is crucial to understand, were the first to raise the issue of *culture* to the level of intellectual considerations. The so-called *Kulturdifferenzhypothese* [cultural difference hypothesis] of the New Right raised--by virtue of the Muslim faith of most guestworkers--the religious specter of Turkish "orientalness" and stipulated the inherent irreconcilability of "their" and German Western values.¹² Accordingly, the reactions by the political establishment were often bordering on the hysterical, especially on the part of the Christian conservative intellectuals who saw a multicultural society as the end of civilization, "Was nützt aller Wohlstand der gegenwärtigen Generation, wenn die Identität, das Weiterleben des deutschen Volkes in künftigen Generationen gefährdet ist?"¹³ so the scientist Theodor Schmidt-Kaler (Frank 1996, 26; White 1997, 761). Not surprisingly, no efforts were made to provide a political or social framework for their integration. As foreigners, they were unwanted elements in the German body politic so that any accommodation of their cultural or religious traditions was completely out of the question (Brubaker 1992, 177).

At the same time, church and left-wing organizations started a counter-offensive, trying to humanize these demonized migrant communities, often against the fierce opposition of the population, and started a discourse about the possible accommodations for these minority groups. Especially the liberal Christian-Democrat Heiner Geißler attempted--moderately successfully--to reach a necessary arrangement. In an engaging plea for a new model of integration, wanting to ensure the preservation of the cultural identity of the foreign residents, he asked Germans, who continued to profit from the economic contributions of the guestworkers, to reject their germanocentric demand for complete assimilation. He argued that the immigrants had to respect the liberal-democratic values and basis of German society. Germans, on the other hand, should view cultural diversity as an enrichment of their society rather than as a threat (Frank 1995, 39). The slogan "Foreigners in Germany - For a Common Future" is exemplary of that approach, and comparable to the tentative steps by the conservative government in France under Giscard, to allow some culturally pseudo-accommodating policies, such as the funding of ethnic festivals, food fairs, educational, sport or leisure facilities, but which, in fact, limited these cultures to their exotic attractiveness to Germans. However, despite all the accommodating language, there was no intention whatever to grant foreigners civil, political or cultural *rights*. Their rights status was determined simply by bilateral agreements, social and labor laws as well as anecdotal goodwill gestures of the municipalities or private organizations in the provision of social services to the communities, and the accommodations provided were simply made out of a sense of an ethical, but not legal, obligation (Thränhardt 1989, 15). The active institutionalization of Islam in

¹² It is important to understand that until the Turks were decisively vanquished in battle in the eighteenth century, they posed a permanent military threat to Christian values and Christian countries. As such, the image of the bloodthirsty, raping, scimitar-wielding, wild-eyed, black-haired Turk perpetuated in folk stories and children's rhymes, was readily available as an image channeling superficial discomfort with the presence of migrant communities into active xenophobia.

¹³ Translation: "What good does any wealth to the present generation if the identity, the continued existence of the German people in future generations is threatened?"

Germany, unlike what had taken place in the Netherlands (Doomernik 1995, 54-55; Shadid and Koningsveld 1996; 1992; 1991, 89-122), was still an illusion.

Against the backdrop of this passionate debate, the second response period to a now factually multiethnic German society was dominated by the question of how to square the circle and best accommodate the foreign communities without threatening the self-definition of Germany as an ethnically constituted nation. As such it was characterized by a more differentiated discourse, and the increased savvy of supporters of the multicultural model who had developed specific policy suggestions to deal with the "foreigner problem." The suggested--and adopted--model was one of a "third way," once again similar to the odd French mixture of neo-republican assimilation and the right to difference for minority cultures. Advocated particularly by Daniel Cohn-Bendit (called Dany le Rouge, the hero of the 1968 student revolt in Paris), who argued that the most appropriate multiculturalism model for Germany was one that struck a "balance between innovation and conservation." As such, it would be a "third way," something new, "between foreigners and Germans." It was supposed to be "neither melting pot nor multiethnic empire," but something in between, "neither exclusion nor assimilation" (Cohn-Bendit 1989, 435).

In practical terms, this meant that official policies would combine integrative efforts in the social and political realms through the formation of foreigner's councils, improved educational facilities, increased language education for immigrant children, the discouragement of ghettoization, with funding for the maintenance of Muslim/Turkish traditions, such as mosques, newspapers, magazines, sports clubs, et cetera (Doomernik 1995, 58-9). In other words, the minority residents should become economically and socially part of German society, while culturally and politically remaining outside: "The real objection to non-German immigration has not been economic or demographic but cultural and political" (Brubaker 1992, 176). Accordingly, German naturalization laws still made it inordinately difficult for immigrants to become citizens and children born to first generation migrants did not automatically receive German citizenship at birth. Note that there was still no intention of granting any cultural *rights* to immigrant minorities because that would have meant the acceptance of their permanent presence and the effective collapse of Germany's ethnocultural self-definition. Cultural rights, such as comprehensive exemptions, assistance rights or symbolic rights (Levy 1997) would signify the pillarization of a homogeneous society as cultural differences would be affirmatively nurtured. The conviction of a *right* to difference was not yet existent as such, neither in the policymaking circles nor in the general population (Hoffman and Kramer 1995). Politically, advocates of multicultural accommodation and the fostering of identity attempted to sweeten the bitter pill of this inevitable pluralism by alluding to the cultural diversity that had always made up Germany. Simultaneously, the migrant community itself underwent significant changes that made the implementation of these new policies more palatable to many native Germans. The presence of immigrant children and women and the resulting increased interaction with foreign residents in schools and at work mitigated the stereotypical image of the guestworker as a wild-eyed barbarian (White 1997, 754, 762). The self-identity/definition of most Turkish youngsters, like in France, was decidedly secular, with a positive view of their own cultural heritage yet in combination with a complete acceptance of German liberal individual values (White 1997; Schütt 1998, 8).¹⁴

¹⁴ For an interesting discussion of the cultural identity problems for African-Germans, see Tina M. Campt. 1993. "Afro-German Cultural Identity and the Politics of Personality: Contests and Contexts in the Formation of a German Ethnic Identity." *New German Critique* 58 (Winter): 109-26.

As a consequence of these developments, the current period is now characterized by a pragmatic approach to the necessary large-scale integration of the immigrant communities (Frank 1995, 93). However, it needs to be pointed out that this modified approach does not indicate the beginning of a complete intellectual reversal of Germany's self-definition but was mainly catalyzed by deadly outbreaks of anti-foreigner violence in the early to mid-1990s, and likewise, informed by the impression of an increasing fundamentalist streak among Muslim immigrants (Binswanger 1990; Frank 1995, 99; Thränhardt 1989, 16-8). As Pasqua did in France, so does the German government try to co-opt the different factions of Islam into cooperation with the state system and integrate them on German terms. This, of course, is not to say that there is universal agreement on the desirability of a multicultural society--there definitely is not--yet even the most ardent public defenders of a German ethnocultural self-definition realize that the foreign residents are here to stay and a mode of accommodation needs to be found (AP Worldstream 1999c; Frank 1995, chap. 3). As such, Islam is still more tolerated than integrated (Delattre 1997; see also Anon. 1998e). While the "*miteinander*" [togetherness] (Anon. 1998e) is now the accepted formulation of the proper approach to immigrant communities, the view that "the other is always foreign" (Frankenberg 1992/93, 126-9; White 1997, 760) is still widespread, regardless of personal interactions and friendship: a "Turk" or a "Muslim" will never be completely a part of German culture (White 1997, 760).

This realization engendered the implementation of comprehensive integrationist policies and the increased recognition of the fact that the preservation of a cultural identity was a necessary aspect of the integration of the foreign population. *Zwangsgermanisierung* [forcible germanization] or *Eindeutschung* [germanization] was not only impracticable to ensure the loyalty of the foreign communities to the German polity, it is also ethically indefensible. Therefore, an increasing number of intellectuals argued that just reforming the citizenship law (which eventually happened in 1999 and granted dual citizenship to second-generation immigrants who were born in Germany) was not enough. "Der Pass allein schafft noch keine Identifikation mit dem Gemeinwesen,"¹⁵ argues prominent social commentator Bassam Tibi (Tibi 1999). So, increasingly, the right to be different as a human right and the right to one's identity has become part of the German discourse on multiculturalism (Apel 1995, 9-19). Urban multiculturalism has become a reality and policymakers respond to this fact (Kelber and Will 1990), faced with an increasingly vocal and confident community of immigrants that have become firmly entrenched in German society, with a variety of policies working towards the factual institutionalization of Islam and the Muslim-Turkish communities, including Islamic instruction in schools (for instance in Berlin and Northrhine-Westphalia), the foundation of Islamic research centers (Schütt 1998, 8), the funding of mosques, the spread of foreigner's councils who have consultative status with authorities, ethnic festivals, the acceptance of Islamic norms in a variety of situations, ranging from food in schools and hospitals to the establishment of prayer rooms in companies (Noormann 1994; see also Anon. 1997b).¹⁶ The question now is not anymore one of whether Germany is multicultural but only to what extent, and how deep, cultural diversity should go (Dierbach 2000, 7; Gerhard 1994; Tibi 1999, 4). For instance, more than between four hundred and five thousand Muslim Germans now serve in the army (Gerlach 1999, 4; Lerch 1999, 14; SEV, 1999, 7) and require--and receive at certain barracks--*halal* food, with the possibility to receive days off during the *Ramadan*, and, in the future, to have spiritual

¹⁵ Translation: "The passport alone does not establish an identification with the general polity."

¹⁶ Noormann offers a good case study of the work of the *Kommission für Zuwanderung und Integration* [Commission for Immigration and Integration] in Frankfurt, Germany, a city with a large immigrant population.

guidance provided by an *imam* (Gerlach 1999, 4).¹⁷ Some municipalities allow *muezzins* to use loudspeakers when they call Muslim believers to prayers (Schütt 1998, 4). German Muslims are coveted voters for left and liberal parties who make special efforts to appear culturally sensitive and use full-page ads in newspapers to wish Muslims happy holidays at the end of *Ramadan* and the Feast of Sacrifice (Schütt 1998, 5). One German of Turkish ancestry, Cem Özdemir, is a high-profile member of the Green party of the German *Bundestag*, and the intellectual discourse is slowly changing from a notion of "foreigner policy" to one of "minority politics" (Frank 1995, 95; Leggewie 1993, 8). Nonetheless, to revert to the question of cultural rights as a pro-active identity affirming policy nurturing individual cultural communities within the German polity, this is still neither popular nor planned. One example is a 1999 recommendation by the conservative party CDU to the German government to provide a comprehensive policy for the integration of legal foreigners. Most of these suggestions are functional, ranging from German language education for immigrants, integrationist policies in school, the opening of more jobs at the job market along with improved qualifications, police protection of foreigners from physical attacks through increased patrols, to the founding of mosques, etc. It is quite evident, though, that the prime goals are still integration and assimilation to the greatest extent possible. The independent value of a cultural or an Islamic identity and the according necessity to nurture this cultural context of choice, to use Kymlicka's term (1995b), is officially recognized yet not consistently followed through. The only true attempt at this realization is the recommendation to establish Islamic schools (Deutscher Bundestag 1999), which is being carried out in a few metropolitan areas. Note also that the accommodation of these policies geared towards the maintenance of identities, is rooted firmly in the domestic right to freedom of religion (Article 4 of the German Basic Law), and not in any international human rights regime (Frank 1995, 100).¹⁸

This takes us now to the German attitude to the international human rights regime for cultural minorities. In Germany, the ECHR has been forthrightly incorporated into domestic law and thus forms part of federal law. Article 27 of the ICCPR as well is officially recognized and enforced in Germany with regard to the national Frisian, Danish and Sorbian minorities. However, Germany does not recognize the application of Article 27 to immigrant minorities.

¹⁷ In response to my request for information on German Muslim soldiers, the German Ministry of Defense answered that the federal government only has data based on voluntary disclosures, and only on Catholics and Protestants: 114,780 (37% of the entire force) are Protestants, and 94,831 (31% of the entire force) are Catholics. In a personal e-mail communication, an army information officer said that for privacy reasons he could not divulge any data on Muslims and Jews, and even if he were allowed to do so, he would not be able to, because the army does not compile statistical data on this matter. Both Germany and France compel their citizens under certain circumstances to publicly express their loyalty to the state and its fundamental values. Cases in point are the beginning of an individual's military service, swearing-in ceremonies for public offices, or oaths in court proceedings. This is regulated, for instance, in Article 58, section 3 of the *Bundesbeamtengesetz* [German Civil Service Law], or Article 9 of the *Soldatengesetz* [German Military Code]. Given the number of Muslim servicemen in the German army, the Social Democratic delegate Gerd Andres put a written question to Bernd Wilz, permanent parliamentary secretary in the Department of Defense on March 17, 1995, asking if German soldiers of Muslim creed would have the opportunity, similar to a newly enacted law in the Netherlands, to modify Article 9 of the Military Code and swear an oath specifically to the name of Allah. In his response, Mr. Wilz clarified this important issue and pointed out that all citizens have the right to choose a different formulation of their oath as long as another law specifically permits this. Even if there is no specific law for this purpose, as in the case of Islam, all Muslim soldiers have the right to choose a formulation commensurate with their creed and belief. Referring to the opinion of Muslim experts, he stressed that the generic formula "I swear . . . so help me God" should not pose a religious problem for Muslim soldiers, as the general reference to "God" permits individual identification with a specific God, in this instance, Allah (Deutscher Bundestag 13/841, 1995).

¹⁸ For an evaluation of whether the joint constitutional and international protection of human rights in Germany is to be considered complementary or as a rivalry, see Paul Kirchhof. 1994. "Verfassungsrechtlicher Schutz und internationaler Schutz der Menschenrechte: Konkurrenz oder Ergänzung?" *EuGRZ* 21 (1&2): 16-36.

Furthermore, recall that the German government has entered a reservation with regard to the applicability of Article 2 the *Framework Convention for the Protection of National Minorities* that guaranteed the protection of the right to culture, to the same national minorities. Therefore, resident immigrant communities in Germany have little recourse to the international regime on the protection of cultural rights through Articles 27 ICCPR or Article 5 of the *Framework Convention*, and, to the best of my knowledge, no attempt has been made by immigrants to do so. This is largely a reflection of the absence of the human rights dimension of the issue from the German discourse on integration. Integrationist policies are firmly rooted in the domestic sphere and locked in a national frame of reference. Twelve cases in all were brought to the attention of the United Nations Committee on Human Rights (Koopmans 1999, 687). By far the most important group demanding a type of cultural rights were the Rôma and Sinti, who demanded recognition as a national minority (granted by Germany if the applicant is a German citizen) on the same level as the Sorbian and Danish minorities, in five of the twelve cases. The immigrant community, so Koopmans, made very few claims to any rights at all - claims for rights made up only 9% of the all minority claims, the remainder was based on claims against violence and discrimination (Koopmans 1999, 687).

Given the lacking international context, let us now turn to and evaluate specific domestic case studies, and examine the German willingness to extend cultural rights to areas that are constitutive of a Muslim identity.

II. Family Law: Engagement, Marriage and Divorce

Introduction

Muslims in Europe struggle to preserve their distinct traditions, particularly those that pertain to familial relationships. When asked in surveys what aspects of their cultural tradition they would most like to see more acknowledged by their new home countries, Muslims predominantly mention Islamic family law (Buttar 1987, 34; Karakasoglu 1996, 92). The main reason is the great importance of the family in Islam - the family is considered the cornerstone of Islamic society (Ahsan 1995, 21; Poulter 1998, 202; Rude-Antoine 1997; Rude-Antoine 1990, 11), because it is the nurturer as well as the socializing agent of the next generation of Muslims. About one third of the legal precepts of the *Quran* relate to the family and family relations (Ahsan 1995, 21). While living in a country with a Muslim political and social system, the ability to perpetuate one's religious and cultural traditions is not really in danger. Yet the move to another country with an entirely different political and social organization can easily jeopardize the integrity of the traditional cultural purpose of the family, and lead to the actual disintegration of the traditional family model and relationships (Chirane 1995, 16; Rude-Antoine 1992, 89):

The parents idealize the memory, if not of a paradise lost, then at least if a traditional world lost, and cannot recognize themselves in their children. It follows that the children can neither identify with their parents. The family therefore finds itself battered not by cultural changes but by the social conditions of integration. (Chirane 1995, 17)

The disintegration of this cultural nucleus is then often a sign of the disintegration of the entire cultural identity framework.

This section will explore the extent to which French and German courts and public policies have recognized traditional Islamic family customs and/or integrated Muslim family law into their decisions in matters of engagement, marriage and divorce. I will pay further attention to polygamy and an Islamic form of divorce, the *talaq*, also called repudiation. I will argue that both France and Germany have shown very limited flexibility in their responsiveness to the needs of a multicultural society in the legal sphere (Jayme 1999a). While there is little willingness to accord *official* legitimacy to practices that are considered "illiberal" by Western standards, such as the *talaq* divorce or polygamy, both countries have tacitly recognized the existence of polygamous marriages in their societies and granted civil effects to these arrangements and legal protection to the wives and children. Likewise, the *talaq* divorce is being recognized in Germany as having validity under tightly defined circumstances. In all cases, however, the rationale behind the decision may have been less one of an interest in these practices as important cultural traditions, as evidenced by the wording of the rulings, than one of following their international and/or bilateral obligations under international private law, as the French jurist Jean Déprez acknowledged quite openly:

Ce serait certainement une erreur de croire que parce qu'elle rattache le statut familial à la nationalité de la personne la règle française de conflit procède d'une philosophie qui viserait à la sauvegarde de l'identité nationale et culturelle de l'étranger dans les relations internationales. Telle n'a jamais été sa signification. (Déprez 1996, 98)

The Importance of Islamic Family Law for Muslims

For Muslims, the importance of having Islamic family law recognized by Western institutions is based on a complex set of motivations, expectations and fears. The most significant, certainly, I already mentioned at the outset: the general importance of the family in Islam and the desire to maintain a traditional family structure in the face of an alien culture. Especially in Islam the legal principles pertaining to the family are considered the embodiment of the core precepts of the culture. Therefore, the recognition of Islamic religious family law by courts and policies becomes even more important as religious belief, legal principle and family relations are closely intertwined.

Furthermore, many immigrants may consider the recognition of traditional codes a matter of their constitutionally and internationally guaranteed right to freedom of religion, especially as the literature shows that many Muslims in Europe, especially from traditional backgrounds, are deeply troubled by what they perceive as the alternative: the application of legal norms expressive of and condoning values that appear to be polar opposites to their own: sexual libertinism, gender equality, easy abortion, marital breakdown, cohabitation, and children born out of wedlock, to name but a few. In this regard, many religious Muslims sincerely believe, as Poulter points out, that the best way to preserve their cultural identity is to follow their own traditional legal codes (Poulter 1998, 203).¹⁹

¹⁹ Another reason may be that many Muslims come from countries that themselves officially recognize legal pluralism, permitting family relations within different religious and ethnic communities to be regulated by a variety of distinctive systems of personal law, and expect similar open-mindedness in their new homeland (Poulter 1998, 202). India and Nigeria would be obvious examples of countries that provide for a comprehensive structure of legal pluralism. Several provinces in Nigeria with a majority Muslim population recently instated the *shariah* as the principal legal code. In the remaining Southern provinces, which are predominantly Christian, the codices that were instated by the British colonial rulers, and comprise a combination of Western norms and tribal customs, remain in effect for non-Muslims. Likewise India recognizes traditional legal codes for different ethnic groups, such as Muslims and Sikhs. Furthermore, they may point to the autonomous status given to religious minorities, especially

Muslim Family Law in France and Germany

Islamic tradition considers matrimony as the optimal state of existence for an individual and the only legitimate area for intimate relations and procreation (Billah 1995, 42). The *shariah* contains a multitude of specific prescriptions about the prerequisites, modes and conditions under which a valid marriage can be concluded, should be maintained and can be ended (Rude-Antoine 1990, 15-29). As a result of immigration from Muslim countries and subsequent family reunifications, numerous legal terms and concepts rooted in the *shariah* and incorporated into secular domestic laws were imported into France and Germany (Rude-Antoine 1991).

Many of these concepts do not have any equivalent in domestic legal systems but have ended up before domestic courts nonetheless for resolution as a result of stipulations of international private law and bilateral agreements that compel the country of residence to apply the laws of the foreigner's country of citizenship in matters of private law (Rude-Antoine 1992, 111). Therefore judges trained in the Western legal traditions are now called upon to interpret the enforceability and legality of institutions such as the dowry (*mahr*), the requirement that a Muslim woman, even of majority, have a guardian agree to her marriage (*wali*), the question of the legality of a marriage between two persons who had the same wetnurse and is prohibited by the *shariah* (*parenté par allaitement*), the legality of the unilateral repudiation of a wife by her husband (*talaq*), or the validity of a marriage concluded by virtue of the power given to someone else to choose a marriage partner and/or represent the partner during the signing of the marriage contract (*mariage par mandat*) (Rude-Antoine 1992, 119).²⁰ In many instances the problem is only theoretical because no cases have actually arisen, such as on the *wali* or the establishment of a family relationship through nursing, as reported in the literature (Kotzur 1988, 112; Rude-Antoine 1992, 120). The cases that have come before domestic courts and received public attention have dealt almost exclusively with the dowry, polygamy, and the *talaq* divorce.

Engagement: The Dowry

Surah 4 of the *Quran* stipulates that a husband is required to give his wife a specified amount of money or its equivalent in jewelry before the wedding, the morning after the wedding, or upon divorce (Rude-Antoine 1990, 37). This dowry (*mahr*) is the exclusive property of the wife and was institutionalized in the *shariah* to ensure her financial independence in case of a divorce or upon the death of her husband (Rude-Antoine 1991, 95). It is particularly important as the dowry is considered a condition for the validity of a marriage according to Islam and required in most Muslim countries (p. 95).

In Germany, the institution of the dowry is still viewed as archaic by many jurists. For instance, Heldrich called it a "cuckoo's egg from the Orient" (Heldrich 1983, 64), largely because of the difficulty of finding an equivalent legal concept in German jurisprudence and the resulting complexity of most legal cases, involving questions of domestic law, religious law and custom, as well as different foreign laws and rules of international private law. Nonetheless, the courts

the other religions of the book, Judaism and Christianity, in their own home countries, in matters of private law. While the actual autonomy given to these religious minorities may in fact be quite limited, it is correct that Israel, Egypt, Iran and Syria, for instance, recognize (Coptic) Christian laws and Jewish laws as valid legal sources to regulate family relationships. In these matters, the *shariah* or Jewish law do not apply.

²⁰ Germany generally recognizes marriage *in absentia*. For two recent cases, see Pakistani Marriage in Absentia Case. NVwZ 1995:14. VG Wiesbaden - 3/2 E 7282/93. Date decided: 12 September 1994. Also Nigerian Marriage in Absentia Case. InfAuslR 1994:97. VG Koblenz - 3 L 3811/93. Date decided: 25 November 1993.

have been responsive to claims by Muslim women for its enforcement.²¹ A number of cases have come before German courts in which the legality of the dowry and its enforceability in Germany had to be decided. In most cases, such as the Iranian German Dowry Cases before the OLG Köln (14 UF 13/81, 29 October 1981), and the AG Hamburg (261 F 84/80, 19 December 1980) the courts applied Islamic religious law, even when the husbands claimed that a Muslim ceremony had no legal validity in Germany, and held that the dowry was an integral part of Muslim religious law and practice and upholding most claims brought forth by the wives (Heldrich 1983).

In another similar case, the Islamic Dowry Case (IV b ZR 10/86, 28 January 1987) that had ended up before the German *Bundesgerichtshof* [Federal Court for Civil and Criminal Cases], an Israeli Arab of Muslim faith married a German man in front of a German official. The husband then converted to Islam. Later, both re-validated their marriage in a *Quranic* ceremony in Munich. The dowry due to the wife in the event of a divorce was set at DM100,000 (roughly \$45,000), plus any accrued interest. When the marriage collapsed and the woman sued for payment, the court decided that the Islamic dowry was an integral part of Muslim custom and as such, the husband had an obligation to pay, even though there was no equivalent to dowry in German law (Heßler 1988; Jayme 1999a, 23).

Likewise in France, the Islamic dowry has met with no judicial resistance. Only a few cases have come before courts in which women sued their husbands who refused to pay them the dowry after the wedding or upon divorce (Déprez 1996, 69; Rude-Antoine 1990, 140). Generally, the courts have been responsive to these claims and have routinely upheld them for years, considering the dowry, from a jurisprudential point of view, part of the Islamic marriage system (Rude-Antoine 1992, 126). For instance, the *Cour de Cassation*, in two decisions on 4 April 1978 (Rude-Antoine 1992, 124) and 2 December 1997 (Gannagé 1998) upheld the dowry as enforceable in France on the basis of international private law and/or according to domestic legal standards.

Marriage: Religious Ceremonies, Marriage Age, and Polygamy

The question of the recognition of specific Islamic marriage customs has entered the court systems of France and Germany in two different ways. First, through the question of whether Islamic ceremonies are sufficient to establish a legal marriage bond in the eyes of the civil domestic system. Neither France nor Germany recognizes a *Quranic* wedding alone as having an (enforceable) legal effect if the wedding was concluded on French or German soil. A civil ceremony alone enjoys legal recognition. If two Muslim spouses wish to conclude a marriage following the laws of their home country, they must do so before a consular official of their country of origin. However, if the Islamic ceremony was conducted in the country of origin of the spouses, then the marriage is considered to have legal validity by itself in French and German courts (Rude-Antoine 1991, 98), including the legitimacy of the children that result from this marriage. In a few cases Muslim husbands tried to avoid child support payments for their children who lived with them in Europe by claiming that the marriage from which these children resulted were solely religious marriages, as such not recognized by Germany or France, and therefore they had no obligation under the Islamic laws of their home countries to pay child

²¹ For other cases in which the Muslim husband was ordered to pay the *mahr* to his wife, see Turkish Dowry Case. *FamRZ* 1998:623 OLG Düsseldorf. Date decided: 3 January 1997. Jordanian Dowry Case. *FamRZ* 1996: 1478. OLG Frankfurt/Main. Date decided: 29 February 1996. Turkish Dowry (Mehir) Case. *FamRZ* 1994: 899. OLG Köln - 13 U 251/92. Date decided: 21 April 1993. Islamic Dowry Case. *IPRax* 8:109. Bundesgerichtshof - IV b ZR 10/86. Date decided: 28 January 1987. Kenyan Dowry Case. *FamRZ* 1998: 1591. AG Würzburg. Date decided: 24 September 1997.

support. Pointing to the obvious contradiction in their claim regarding their being subject to Islamic law, courts in both countries upheld the marriages as well as the paternity of the fathers.²²

The second issue involving questions of Islamic marriage is polygamy. *Surah* 4 of the *Quran* holds that a husband may have up to four wives simultaneously on condition that he believes that he can treat them all equally fairly and lovingly. There is widespread agreement among many Muslim jurists today that, while polygamy is permissible, the ideal is monogamy.²³ Likewise, most Maghrebi immigrants frown on the practice and consider it a marginal institution that might only have value in case of war to prevent illicit behavior by women as a result of a considerable imbalance in gender ratios (Rude-Antoine 1991, 96).²⁴ Nonetheless, except for Tunisia²⁵ and Turkey, all Mediterranean and North African countries, and most Muslim Sub-Saharan African countries, for instance Mali, the Central African Republic, Senegal, Côte d'Ivoire, and Burkina Faso, allow polygamous marriages and a substantial minority of immigrants still considers polygamy as an important aspect of the legitimacy of family life under Islamic law (Rude-Antoine 1990, 96; Gillette-Frénoy 1993). In fact, in 1995, the highest Sunni Islamic cleric, *sheik* Al-Azhar, condemned a law devised by the Egyptian government that would give women, on the occasion of their marriage, the right to opt for a marriage contract that would automatically given them the right to a unilateral divorce if their husband takes a second wife (Anon. 1995f).

According to several studies, the population living in France in polygamous situations (excluding children) numbers between 20,000 and 130,000, hailing largely from Sub-Saharan Africa, particularly from the Soninké, Toucouleurs, Bambaras and Malinké ethnic groups (Jelen 1993, 72; see also Gillette-Frénoy 1993a, 1993b). In Germany, the numbers are much lower, although no reliable statistics exist, and are generally put at less than 500 people (Drobinksi 1998).

Neither France nor Germany recognizes polygamy by law, because it is in opposition to Western values of gender equality and public morals. As a consequence, these countries do not permit any polygamous unions to be concluded on their soil, even between partners whose countries of origin permit polygamy, nor do they officially sanction these alliances. For instance, on 2 February 1956, the *Tribunal de Grande Instance de Paris* established monogamous marriage as the only form of matrimony that can be validly concluded by a public official in France and, later, in 1967 denied recognition to the marriage of a single French woman with a man from Cameroon who already had a wife, despite the fact that Cameroon

²² See *Benali c. Makhoulf*, *Revue Critique de Droit International Privé* 87:652. Cour de Cassation, 1ère Chambre Civile. Date decided: 3 June 1998. Also *Consorts Abdallah c. M. Y. Abdallah et autres*, *Revue Critique de Droit International Privé* 87:602, Cour de Cassation, 1ère Chambre Civile. Date decided: 25 February 1997. For Germany, see *Syrian Paternity Case*, *VersR* 1997:863. OLG Saarbrücken - 5 U 800/95-82. Date decided: 18 December 1996.

²³ Some Muslim countries have decreed that the permission of a court must be obtained before a man may take a second or subsequent wife. In Iraq and Syria, for instance, a judge has to be satisfied that a legitimate interest in taking a subsequent wife exists and that the man is capable of providing the necessary financial support. In Morocco, a judge can forbid polygamy if injustice among wives is feared. In Pakistan and Bangladesh prior written permission by an arbitration council is required (Poulter 1998, 231).

²⁴ For an enlightening argument in favor of the benefits of polygamy, see Muhammad Masum Billah. 1995. "Polygamy: Refuting Some Misconceptions." *The Muslim World League Journal* 23 (1): 42-4.

²⁵ President Bourguiba outlawed polygamy in Tunisia in 1957 based on a reinterpretation of two sections of a *surah*. The first section within *surah* 4 allows each man to have four wives if he can treat them fairly. A second section within *surah* 4 holds that a man is never able to be fair and just between women even he wanted to. Therefore, since in modern times nobody could possibly treat four wives equally and fairly, he prohibited polygamy altogether (Poulter 1998, 213).

allowed polygamy and the ceremony was concluded in the country (Rude-Antoine 1990, 135).²⁶ A few years later, in 1972, the same court refused a Muslim Algerian woman her inheritance by her husband who had resided in France on the basis that she was the second co-wife of the deceased and polygamy was considered contrary to the public order (Rude-Antoine 1991, 46). Similarly, in a case before the *Cour d'Appel* in Chambéry in 1961, the second wife was found to be ineligible for social security benefits in France (Rude-Antoine 1990, 139).

On the other hand, the courts have recognized that polygamous unions concluded abroad, where permitted by domestic laws, do enjoy some domestic legal protections (Rude-Antoine 1997, 203-4; Rude-Antoine 1991, 47). For instance, the *Cour d'Appel* de Paris held on February 22, 1978 and the *Cour de Cassation* on 3 January 1980 that a polygamous marriage properly concluded abroad does result in some civil rights for the second and following co-wives, and polygamy is not a *prima facie* violation of the French public order (Rude-Antoine 1997, 211; Rude-Antoine 1990, 138-9). The courts reinforced that principle the same year. In the famous Moncho Case of 1980, the *Conseil d'Etat* granted permanent residency status to the second wife of a man from Algeria (*Haut Conseil à l'Intégration* 1992, 20), establishing firmly for the first time that a polygamous marriage may have civil effects in France in the form of the right to family reunification.²⁷ Furthermore, subsequent reinterpretations of the 1961 case concluded that in the question of social security benefits, polygamy ought to be judged according to its function and be classed merely as a variety of a marriage form (Rude-Antoine 1992, 120). Therefore, health insurance benefits are paid to the woman who is registered by her husband as a so-called *ayant droit* [dependent], regardless of whether her marriage is considered legitimate legally or not. Furthermore, co-wives can purchase so-called voluntary health insurance and thus obtain some protection.

Despite this jurisprudential inconsistency, the French government has recently moved aggressively against the expansion of polygamy on French soil. Although it has not reversed the civil protection of some effects of polygamous marriages, a law passed in August 1993 overturned the landmark Moncho Case, from now on prohibiting the reunification of polygamous families by denying permanent residency cards to the wives and children of men who already live in France with another wife and their children. According to the new law the only case the children from polygamous marriages who live abroad may join their father is in the event of the death of their mother in their home country (Anon. 1995g, 879; Gillette-Frénoy 1993a, 36). A number of immigrant advocacy organizations have tried to get the law changed because of the hardship it causes for the families still in Africa who are deprived of the opportunity to live with their husbands and fathers legally and forces many women and children to enter the country as illegal aliens (F.K. 2000). This illegal entry, so it is argued, places the most vulnerable, young, often illiterate, women and infants in a precarious position. Faced with the constant threat of being deported many women may think that they have no recourse to any legal protection against abuse they might suffer on the hands of their husband or their co-wives. Furthermore, the children of more recent wives may suffer from deprivation as the older wives may not be willing to share the limited social security benefits that they receive for their own children, which may be the ones officially registered with the French authorities. To this day, however, the law has remained on the books and is being enforced strictly (F.K. 2000).

²⁶ "Le mariage français est une union unique. Chacun pourrait partager sa vie entre plusieurs, il n'y a qu'une mort à offrir. La profondeur de notre civilisation, c'est le mariage monogamique. L'Islam avec sa polygamie fut-elle théorique, est plus étranger à mon âme que n'importe quel autre système de droit" (le Doyen Carbonnier quoted in Rude-Antoine 1992, 119).

²⁷ See also *M. X. c. Mme. Y*, *Revue Critique de Droit International Privé* 86: 41, *Cour d'Appel de Paris*, 2e Chambre Administrative. Date decided: 14 June 1995.

In Germany, the situation is not quite as dramatic, largely because of the small number of polygamous *ménages*. I could find only a handful of reports in the literature on actual court cases that directly involved the legitimacy of polygamy. Like France, Germany recognizes the validity of polygamous marriages concluded abroad, if consummated, but also draws the line at the right to family reunification. For instance, in 1996 the LG München held in the Syrian-German Polygamy Case that polygamous marriages are to be recognized domestically if the marriage was concluded in a country that permits polygamy (235 Js 54017/95, 26 April 1996). In the Jordanian Polygamy Case (17 A 42/83, 7 March 1985) the OVG Nordrhein-Westfalen held that a Jordanian woman of Muslim faith was not entitled to join her husband and his first wife in Germany. In similar cases, the courts held that co-wives did not have the right to join their husbands in Germany, although once they are in the country, the husband is not subject to prosecution just for living with several wives as it is not considered to be against the public order (Kotzur 1988, 100-1). As in France, jurists agree that polygamous marriages have civil effects and co-wives have inheritance and custody rights against their husband and his first, legitimate, wife. For instance, the LG Frankfurt recognized the legitimacy of a child born to the second wife of an Indonesian polygamist (Kotzur 1988, 101).²⁸

Another issue of concern to many immigrant families is the minimum age of marriage. In Muslim tradition, women are the repositories of the family honor, which is expressed in the chastity of the female members outside marriage and the ability of the male members to ensure their purity until the wedding night. In order to guarantee the virginity of the young daughters or sisters, many Muslim families prefer their daughters to get married at an early age (Poulter 1998, 218). The minimum age of marriage for girls in the Maghrebi countries is between 15 and 18, but many girls marry at a much earlier age (*Haut Conseil a l'Intégration* 1992, 77). In France and Germany, on the other hand, the minimum age for marriage is 18. However, there is no case on record in which a Muslim family requested the recognition of a lower age of marriage.

The Question of the Talaq Divorce

Under the *shariah* a divorce between two Muslim spouses can be obtained in a number of different ways, through *talaq* (unilateral repudiation by the husband), *khul* (divorce at the instance of the wife with the husband's agreement and on condition that she foregoes her right to dower) *mubar'at* (divorce by mutual consent), and *faskh* (unilateral divorce by the wife but with required additional approval of a court). Generally, in Islam, divorce is discouraged. The prophet Mohammed is said to have called divorce the most abominable with God, of all permitted things, and *surah* 2 holds that "women shall have rights similar to the rights against them, according to what is equitable" (Poulter 1998, 232). Accordingly, the law endeavors to confine divorce to those instances when the marriage has irretrievably broken down. Syria, Iraq and Morocco, for instance, demand that a court or another institution be involved and check that the divorce is really needed and not pronounced on a whim. However, the divorce itself remains valid even if the courts find criminal behavior on the part of the husband and subject him to punishment. Pakistan and Bangladesh require that the husband provide a letter stating his wish to divorce to a designated public official along with a copy to his wife (Carroll 1997, 98). Again,

²⁸ A recent case of an attempt to enter into a polygamous relationship, unfortunately, ended in bloodshed. A 34-year old construction worker from Turkey, who already a wife and children living with him in Germany, wanted to marry a 17-year old German Muslim girl. When she and her parents refused, the man shot her and her entire family to death (Dietrich 1999, 13).

Tunisia has completely abolished extrajudicial divorces and all requests for separation must be brought before a civil judge.²⁹

The *talaq* divorce is the Muslim custom that has received much attention in the literature. Neither Germany nor France recognizes the *talaq* divorce *per se* as a legitimate form of divorce on domestic soil (Jayme 1999a, 25). Nonetheless in the 1980s and 1990s, some French judges have, relying on bilateral agreements with Morocco and Algeria, accepted the validity of the effects of the *talaq* on French soil, if the *talaq* was pronounced in their home country and on condition that the husband and wife present themselves before French courts. The rationale was that the *talaq* was practiced by a minority of Muslim families in any case, but if the husband were forced to present himself before the court, at least the wife would have the opportunity to express her concerns and demand the payment of any dowry still due to her in a legal forum (Déprez 1996, 85). One of these cases decided on this quasi-international basis was the famous Simitch Case, decided by the *Cour de Cassation* on 6 February 1985. The case established that instead of appearing before a French court a couple might make their plea before any court in a country with which they have any reasonable connection. Naturally, most couples appeared (presumably because the husband insisted) before a court in their home country, which, in almost all cases, upheld the *talaq* by the husband. Since this practice was found to be so greatly abused, the logic has not found great resonance with the *Cour de Cassation*, and in cases in the 1990s before it, the right to a unilateral divorce was prohibited under almost all circumstances (Déprez 1996, 86-9; El-Husseini 1999, 427).

The jurisprudence and legal literature in both France and Germany agree that the unilateral repudiation of a wife that leaves the woman without *any* legal recourse is contrary to the public order as it violates the principle of gender equality. The argument that the *talaq* is a legal form of divorce in Muslim family law and, as such, recognized by almost all civil codes of most Muslim countries is not considered *per se* a sufficient reason to recognize its validity and enforceability on German or French soil. However, some scholars have urged a more differentiated view of the *talaq* divorce as some marriage contracts permit the wife a unilateral *talaq* against their husbands (Beitzke 1993). To date, there are only two conditions under which German courts recognize the *talaq*: if the wife agrees in front of a German court or if the marriage could be dissolved in Germany for the same reason. On the former basis, in the Lebanese Talaq Case (1F 162/92, 19 March 1992), a judge at the AG Esslingen himself dissolved the marriage after the husband had pronounced the *talaq* in front of him (Beitzke 1993, 231). The latter condition informed the Iranian Talaq Case (21 WF 151/95, 9 May 1996) in which the OLG Köln ended the marriage between two Iranian Muslims which had irretrievably broken down. It can be argued, of course, that if the wife agrees to the repudiation then the divorce is not unilateral anymore. Likewise, if the marriage could be divorced for the same reason based on German law, the accommodation of the *talaq* is not an example of legal pluralism.

Generally speaking, however, the jurisprudence is clear: the unilateral repudiation of a Muslim wife by her husband is not permitted and not recognized by either public policy or German courts. In a recent case, the Jordanian-German Talaq Case (17 VA 6/98, 3 December 1998), the OLG Stuttgart refused again to recognize the *talaq* that the husband had pronounced

²⁹ For a succinct summary of the divorce laws regarding *talaq* by most Muslim countries, as well as a clarification under which conditions *talaq* is considered permissible, see Tahir Mahmood. 1992. "No More 'Talaq, Talaq, Talaq': Juristic Restoration of the True Islamic Law on Divorce." *Islamic and Comparative Law Review* 12 (1): 1-12.

against his wife because the inability of the wife to have any say in the matter was in violation of the German *ordre public*.³⁰

Conclusion

The variety of cases we considered point to a limited willingness by German and French courts to accommodate a number of aspects of Muslim religious traditions in matters of family law. This restrained responsiveness to the needs of a multicultural society in the legal sphere is slightly different from the decidedly assimilationist and anti-diversity policies by both countries. My own interpretation is that these decisions are an indication of the relative lack of interest that the French and German public accords to matters of family law (hence little publicity). This lack of interest, coupled with the comparative insulation of the justice systems in both countries from political and public pressure, may have resulted in a greater willingness by judges to take a pragmatic approach towards finding a necessary arrangement with practices like polygamy or *talaq* that most people still find "repugnant" yet that have become permanent institutions. Given the current political-intellectual climate in France and Germany, it is doubtful whether these actions are an indication for an overall more affirmative approach towards multiculturalism but they are certainly a step in the right direction.

III. Dress Codes: The Problems With Headscarves

Introduction

It seems that not since Lady Godiva rode through Coventry *au naturel* has a piece of fabric (or the lack thereof) been the cause of such a tumultuous controversy as the infamous *affaire de foulard* that rocked France in 1989 and 1994 and has simmered since in most neighboring countries. The question of whether the *hijab* is a sign of religious piety, an Islamic feminist protest against the West's obsession with sex and external beauty, an affirmative identification with a cultural heritage (Gaspard and Khosrokhavar 1995, 70-92), the outward sign of women's inferiority imposed by a patriarchal society (Galeotti 1993; Okin 1998, n.d., 93-107), a hostile attack on secularism (Baines 1996; de Poulpique 1997), or a symbol of the unwillingness of "foreigners" to assimilate into the Western culture of their new home countries (Anon. 1997b; Anon. 1998b) has been debated in hundreds of scholarly and journalistic works without any obvious signs of agreement (Gaspard and Khosrokhavar 1995; see also Anon. 1995b).³¹ Despite the histrionics and over-simplifications in the debate, the positions taken on headscarves are nonetheless an excellent test case for the willingness of countries to embrace cultural rights, because it involves the highly personal right to dress according to one's religious beliefs, a practice that is a constitutive element of a Muslim woman's identity. Moreover, the specific arguments in either country against (rarely for) the *hijab* can be assumed to be indicative of the fundamental intellectual positions towards socio-cultural diversity. In France, the

³⁰ See also *Syrian Talaq Case*. BayObLG - 3Z BR 66/93. Date decided: 13 January 1994. *Iranian Talaq Case*. AG Frankfurt/Main - 35 F 4153/87. Date decided: 9 August 1988. *Pakistani Talaq Case*-Appellate Decision. OLG Stuttgart - 1VA 5/86. Date decided: 11 April 1987. *Pakistani Talaq Case*. LJVBaden-Württemberg - 346E-325/85. Date decided: 23 May 1986.

³¹ For an outstanding analysis of the regional, religious and sociological differences of veiling, see Camille Lacoste-Dujardin. 1990. "Les Fichus Islamistes: Approche Ethnologique d'une Stratégie d'Anti-Intégration." *Hérodote* 56 (janvier-mars): 14-44.

controversy centered on the conflict with the republican principle of *laïcité*, while in Germany the question was a differentialist confrontation with Islam as the "foreign other" (Béji 1990; Le Goff 1990; Shayegan 1990).³²

In this section, then, I will explore how courts and public policies in France and Germany have addressed the problem of whether Muslim girls are allowed to wear the Islamic headscarf to public schools, and whether Muslim women may do so at work. I will pay particular attention to the different rationales that were offered in either country for the respective decisions, and argue that the official position that both countries took toward the question of the permissibility of headscarves--religious freedom and not cultural identity--confirms the general point of this study, the limited interest that both France and Germany show in the comprehensive protection of cultural minority rights, particularly exemptions for Muslim religious communities.

Islamic Rules on Modest Dress

The *Quran* contains a general recommendation for the modest dress of Muslim women. *Surah* 24:31 holds:

and say to the 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 fathers . . . their sons . . . their brothers . . . or their women.

What "beauty" or "ornament" (*zina*) means is not unequivocally clear (Poulter 1997, 46). While some scholars have interpreted it to mean jewelry, most Islamic scholars find it to refer to a woman's hair (Wayland 1997, 551; also Anon. 1997b), which established the long-standing practice of Muslim women to wear *hijabs* or full-size *chadors* [capes]. Furthermore, there is general agreement in legal scholarship that a woman's face need not be covered so that most Muslim women now use only the headscarf, and, perhaps, a loose-fitting coat or dress. There is no consistent interpretation as to whether this *surah* contains an actual duty of women to cover themselves, or just a simple recommendation. In either case, the implementation depends largely on regional, religious-factional and personal interpretations that guide the actual type of covering, if any at all, a woman chooses (Gaspard and Khosrokhavar 1995; Lerch 1998, 3; Mandel 1989; Poulter 1997, 46; Shadid and Koningsveld 1995, 87; Wayland 1997, 551). Some people argue that *surah* 24 does not contain an obligation because *surah* 2:256 stipulates that there is "no coercion in religion," however, there is no widespread agreement on that interpretation (Moruzzi 1994; Shadid and Koningsveld 1995, 87; see also Anon. 1997b).

The question of whether women follow a religious obligation in comparison to a mere personal preference has important consequences for the power of their legal claim. If a woman or girl follows a mere personal preference and this preference were to conflict with a general principle of law or policy, then her argument presumably will carry much less weight than if she can point to a religious legal obligation, as all Muslim girls and women did in all the court cases in France and Germany. Not a single person, with the temporary exception of a young teacher named Fereshda Ludin, claimed the right to an exemption based on personal identity choice. As

³² For a similar political culture approach to that specific issue, see Sarah Wayland. 1997. "Religious Expression in Public Schools: Kirpans in Canada, Hijab in France." *Ethnic and Racial Studies* 20 (3): 545-61. For a political process approach, see Miriam Feldblum. 1999. *Reconstructing Citizenship. The Politics of Nationality. Reform and Immigration in Contemporary France*. Albany, NY: State University of New York Press. For a brief overview of the history of *laïcité* in France, consider Jacques Le Goff. 1990. "Derrière le Foulard, l'Histoire." *Le Débat* 58 (janvier/février): 21-33. Robert Fossaert. 1990. "Pour une Géopolitique de la Laïcité." *Hérodote* 56 (janvier-mars): 8-13.

we shall see, this distinction is crucial for the French courts in deciding the importance of the scarf in defining a person's religious identity.

The Debate on Headscarves in France

L'Affaire de Foulard: Creil, September 1989

In September 1989, three Muslim schoolgirls of Maghrebi [North African] origin, Samira Saidani and Leila and Fatima Achaboun, decided that they wanted to wear the Islamic headscarf, or *hijab*, that covered their hair, ears and neck, to class in Creil, a town about forty miles from Paris. In response, the principal of the school expelled them as they refused drop their scarves to their shoulders during class hours as he had asked them to do. To limit national attention, the community attempted to deal with the crisis locally. Meetings between the students, their parents, school officials and representatives of the Islamic religious and immigrant communities resulted in a compromise, and Samira agreed to drop her scarf to her shoulders during class hours. However, the sisters Leila and Fatima continued to insist on their right to cover their hair and other students started coming to class with the Islamic *fichu* as well (Moruzzi 1994, 658). One month later, France was immersed in a full-blown national psychodrama about the *foulards islamiques* [Islamic scarves], *laïcité pure et dure* [pure and hard secularism], and the *droit à la différence*. Debates raged between those condemning the girls and, more importantly, the entire immigrant community, for their divisive and "aggressive religious particularisms" and those defending the girls' and, by extension, the entire immigrant community's, right to difference (Feldblum 1999, 129).³³ As became readily evident, the polemics over the right to wear a headscarf to school was little more than a proxy conflict for the true issue, the position--social, political, cultural--and integration of the large North African Muslim immigrant community into French society. "Were the girl's actions and the subsequent support for them indicative of the emergence of ethnic politics in France? Were Franco-Maghrebins a critical challenge to the French republican-assimilationist model of integration," commentators asked (Feldblum 1999, 130; Wayland 1997, 551; see also Gaspard and Khosrokhavar 1995)?

The girls, meanwhile, as the debate raged on, continued to stress that their only motivation to wear the scarves was their religious duty to do so, and that nobody had forced or encouraged them to wear the scarf for any other purpose. However, that avowal was lost on journalists, politicians, the public and commentators who happily perpetuated the essentialist claim that feminist scholars propose that no woman in her right mind would want to wear a scarf voluntarily and that those who do must either suffer from "false consciousness" (Galeotti 1993, 660; Okin 1998), or must have ulterior, probably sinister, motives, such as general community mobilization or the overthrow of the secular system of France.³⁴

Soon, Christian and Jewish groups supported the girls' right to wear the headscarf as a religious symbol, and in order to take into account the increasing diversity of French society, encouraged a new definition of *laïcité* (Morin 1990). With this new perspective, the debate shifted to two levels: *fichus* as an attack on secularity, and as a threat to the French model of integration. Almost immediately, the fault lines that had covertly run through the circles of the French intellectual Left on the position on multiculturalism broke open, and very publicly so. Arguing that "the schools is made for receiving children and not excluding them," the then-minister of education, Lionel Jospin, ordered the principal on 9 October to reinstate the girls,

³³ Consider also Jean-François Monnet. 1990. "A Creil, l'Origine de 'l'Affaire des Foulards'." *Hérodote* 56 (janvier-mars): 45-54.

³⁴ See the enlightening interview with Elisabeth Badinter on that issue, excerpted in Moruzzi (1994, 661-662).

headscarves or not (Wayland 1997, 552), thus showing some tolerance of diversity. This had been the position of prominent anti-racists, such as Harlem Désir, and immigrant advocacy groups who argued that

the national community interest as well as the emancipatory interests of the young women were both best served by keeping them in class where at least they would be exposed to the possibility of negotiating between French national culture and the cultural constructions of their own more local community. (Moruzzi 1994, 659)

Prominent leftist intellectuals thought otherwise. In a famous open letter titled "*Profs, ne capitulons pas!*" published in the *Le Nouvel Observateur* in November 1989, Elisabeth Badinter, Régis Debray, Alain Finkelkraut, Elisabeth de Fontenay and Catherine Kintzler, the intellectual élite of France, denounced Jospin as a latter-day Chamberlain. The letter began "Monsieur le Ministre, the future will say if the year of the Bicentennial [of the Storm on the Bastille-SM] will have been the Munich of Republican education." (Badinter et al. 1989, 58).

It is important to stress that at the time of the Creil crisis, wearing a headscarf in class was not illegal in France. The principal expelled the students because he interpreted the *fichus* to be a challenge to the French principle of a secular republican education. There were many other towns in France where Muslim girls attended public schools with their hair covered, but the emotionality of the debate allowed no differentiations. The fact that the students were French residents provided an excuse for an assimilationist and nationalistic discourse that viewed any insistence on cultural heritage as a "perverse refusal of French values, French identity and the French Republican tradition" and no attempt was made to establish and analyze the various layers of different identity expectations that made the girls choose to wear the Islamic headscarf (Moruzzi 1994, 660).

The Headscarf Before the Courts

Faced with a hostile public, intellectuals and a mobilized immigrant communities, the French government sidestepped a potentially disastrous political decision and asked the *Conseil d'Etat* to clarify the affair as a matter of the law, thereby signaling its own disinclination to take a courageous step for cultural pluralism which was then coming under increasing attack by a renaissance of the republican discourse on integration.

The court considered several texts in making its decision, including a 1905 *Law on the Separation of Church and State*, Article 2 of the French Constitution which defines France as an indivisible, secular, democratic and social republic, Article 9 of the *European Convention on Human Rights* that guarantees the freedom of religion, and a 1989 law on immigration which holds that "schools must inculcate their students with respect for individuals, their origins and their differences" (Rädler 1996, 357-8; Shadid and Koningsveld 1995, 89; Wayland 1997, 553). In this decision the court rejected the restrictive interpretation of the principle of *laïcité* and held that in educational establishments, students wearing signs by which they mean to demonstrate their adherence to a religion is not by itself incompatible with the principle of secularism. While upholding Jospin's decree, wearing of headscarves was subject a number of conditions:

This freedom will not permit students to display signs of religious membership that by their nature, by the conditions in which they would be worn individually or collectively, or by their ostentatious or remonstrative character would constitute acts of pressure, provocation, proselytizing or propaganda; undermine the dignity or the liberty of the student or of other members of the educational community compromise their health or their safety; disrupt the conduct of teaching activities and the instructional role of teachers, and lastly disturb order in the school or the normal functioning of public service. (Wayland 1997, 553)

Although the *Conseil d'Etat* generally permitted the wearing of headscarves, the decision was not an unequivocal victory for the Muslim community as it left the decision on the applicability of the ruling up to local authorities that should decide on a case-by-case basis, thus opening the door for a variety of complaints by Muslim girls, and a possible need to revisit the issue itself again in the near future. Also one notes that the *Conseil d'Etat* made no reference whatever to the need or desirability to protect the cultural identity of a student, instead footing the decision firmly and exclusively on religious freedom grounds. While some commentators have expressed concern at the vagueness of the decision (Shadid and Koningsveld 1995, 89-91), Poulter (1995) while also acknowledging the potential for further litigation, hailed the ruling as exemplary for its comprehensive domestic and international legal basis:

The *Conseil* adopted the type of approach I would ideally like an English court to adopt in similar sorts of circumstances, but which is sadly impossible in most cases. It examined the provisions of the French Constitution and the *Declaration of the Rights of Man*; it explored fully the fundamental human rights dimension of the question by drawing attention to all the relevant human rights treaties to which France is a party. (85)

However, as expected by most observers, this ruling did not provide the hoped-for endpoint to the controversy. In subsequent years, many more students were expelled from school for wearing the headscarf that had been considered by their local principals as being "ostentatious signs."

Indeed, already in 1992 the court overturned in the *Kherouaa Case* (*Conseil d'Etat*, #130394, 2 November 1992) the decision of an administrative court in Paris that had upheld a general prohibition of the wearing of any distinctive religious, political or other signs in a school in Montfermeil, on the ground of illegality and abuse of power (Poulter 1997, 60).³⁵ Again, two years later, in 1994, the *Conseil d'Etat* struck down, in the *Yilmaz Case* (*Conseil d'Etat*, #145656, 14 March 1994), a similar regulation in Angers banning students from coming to class with their heads covered.³⁶

The situation became even more tenuous when the new minister of national education, François Bayrou, sent a circular on 20 September 1994 to all schools. In it he told the principals that "ostentatious signs" of religion should be banned from the schools, but indirectly signalled that small crosses and yarmulkes would be allowed (Poulter 1997, 61; Shadid and Koningsveld 1995, 92; Wayland 1997, 553). In previous interviews Bayrou had made his aversion to Muslim headscarves perfectly clear, thereby enraging Muslims and multiculturalists who charged him with racism and xenophobia (Poulter 1997, 61). Immediately, the circular caused a furor among students and approximately two thousand girls challenged the ban, continuing to wear the *hijab* to school (Baines 1996, 307; Barbier 1994; Meister 1994, 3). Within four months, roughly 370 still defied the ban. By the end of the school year 1995, about 100 girls had been expelled (Baines 1996, 307; Poulter 1997, 61-2). The *Conseil d'Etat* has so far not ruled directly on the legality of the circular itself, but experts believe that if a case reaches the court, it may, depending on the circumstances, and if it is found to have exceeded its power as a guideline and changed existing jurisprudence, i.e. the Court's, be struck down (Rädler 1996, 372). In a first test

³⁵ For a comprehensive analysis of the case, see Paul Sabourin. 1993. "Note de Jurisprudence: L'Affaire du Foulard Islamique (C.E., 2 novembre 1992, Kherouaa et autres)." *Revue Du Droit Public et de la Science Politique en France et à l'Étranger* 1 (1): 220-31.

³⁶ For a comprehensive analysis of this case, see Arnaud de Lajartre. 1995. "Note de Jurisprudence: Le Port de Signes Religieux dans les Établissements Scolaires (C.E., 14 mars 1994, Yilmaz)." *Revue Du Droit Public et de la Science Politique en France et à l'Étranger* 3(1): 221-50.

case in May 1995, *Mlle. Aysel Aksirin c. Recteur de l'Académie de Strasbourg*, the court struck down the expulsion of a Muslim girl from a high school in Strasbourg after she had refused to remove her headscarf that she was accused of having worn "ostentatiously." The Court found that she had not, and reinstated her, thereby continuing to follow the legal path it begun in 1989.³⁷

What is very clear, however, is that the *Circulaire Bayrou* effected a shift in the debate about the *foulards islamiques* (Chimelli 1994, 3; Lemoine 1999; see also Anon. 1995d). True to the general reversion of public policies to the republican model of integration, the circular moved the focus away from religious neutrality in schools and back to the traditional, public function of schools as formative, integrative institutions (Rädler 1996, 372), and the principle of *laïcité* was once more the foil against which claims of religious freedom were measured, and not the other way round (Anon. 1999b). This is also evident in a March 1995 case, in which the *Conseil d'Etat* upheld for the first time the expulsion of two girls who had refused to remove their scarves during physical education classes. The court held that the expulsion was justified because, despite safety concerns which the court itself had held to be valid grounds for dismissal, the girls decline to take off their fichus. This had caused serious disruption in the course of the class (Rädler 1996, 361-2). Several years later, the *Conseil d'Etat* ruled on 4 May 2000 that the contract of a school inspector, Julie Marteaux, was properly terminated when she refused to remove her *foulard* during her official functions. The principle of *laïcité* prohibits the display of religious belief to anyone working in the public sector (Anon. 2000a).³⁸

The Debate on Headscarves in Germany

The debate about the permissibility of headscarves in public schools was framed entirely differently in France's eastern neighbor where only a handful of cases has actually made it before the courts. Unlike in France, it was hardly ever argued that wearing a scarf to school was a violation of the secular foundations of the country, simply because secularism, the strict separation of church and state, does not have long intellectual tradition nor a strong factual grounding in German politics. In fact, the two spheres mix substantially. Schools routinely teach religion as a core course, not as an elective, and the state of Bavaria, for instance, compelled public elementary schools to display the crucifix in classrooms until a ruling by the German *Bundesverfassungsgericht* [Federal Constitutional Court] ended the practice in 1995 as a violation of the religious sensibilities of non-Christian students (*Crucifix Case*, 1 BvR 1087/91, 16 May 1995). Similarly, two of the biggest political parties made the adjective "Christian" part of their names, the government collects taxes for churches, most state constitutions contains references to God, and many courtrooms are still adorned by a cross, with the blessing (no pun intended) of the German Constitutional Court (Spies 1993, 638).

Second, there was never a single galvanizing incident comparable to the Creil affair that would have let opponents and supporters of the right to difference clash in the open. Instead, the debate continuously simmered under the surface and consistently centered on the notion of the perpetually "foreign other," the so-called *Kopftuchfrauen* [headscarfwomen] as a stick in the eye

³⁷ For an extensive analysis of the case, see Anonymous. 1995i. "Conclusions des Commissaires du Gouvernement. Conclusions de M. Martinez (re: Mlle Aysel Aksirin c. Recteur de l'Académie de Strasbourg)." *Revue Du Droit Public et de la Science Politique en France et à l'Étranger* 3 (5): 1348-69.

³⁸ See also *Ministre de l'Éducation Nationale, de la Recherche et de la Technologie c. M. et Mme. Ait Ahmad*. *L'Actualité Juridique - Droit Administratif* 20 février 2000: 165. *Conseil d'Etat* (Req. n° 181486). Date decided: 20 October 1999. Also, Frédérique de la Morena. 2000. "Libertés Publiques. Liberté Religieuse. Manifestation de Croyances Religieuses. Port de Foulard Islamique. Incompatibilité avec le Bon Déroulement de l'Activité de l'Enseignement. Légalité de l'Exclusion de l'Établissement." *L'Actualité Juridique - Droit Administratif* (20 février): 165-9.

of a self-defined ethnoculturally homogeneous society, and the need for these "foreign," un-German elements to adapt to the country's Western values (Anon. 1997b). In that, of course, it clearly supports the argument about the continued intellectual reliance of German policy makers or commentators on differentialist arguments when dealing with cultural minority claims. With the exception of this difference in focus, the debate was equally reductionist, suffused by xenophobia, stigmatizations of Islam as a barbaric religion that suppresses women, dichotomous portrayals of "us" versus "Islamic fundamentalists trying to turn Kreuzberg into Istanbul," and the personal attacks on individual Muslim women who refused to blend into the society of their host country, thereby indicating the acceptance of its liberal values (Mandel 1989, 27, 37-8).

The Headscarf in German Courts (Which Are Adorned With Crucifixes)

The headscarf debate in Germany must be considered from three different positions: the right of a student to cover her hair, the right of a teacher or public official to wear a scarf, and the general debate about the role of the *foulard* in society in general. There exists no law, federal or state that would prohibit a Muslim girl from following her religious belief and/or her cultural tradition and wearing a scarf to school. Constitutional law experts give any attempt at a general prohibition of wearing the headscarf little chance of surviving constitutional muster (Anon. 1997b) because the practice is protected by the Article 4, section 2 of the German Basic Law which guarantees an individual's right to freedom of religious expression. A recent decision by the German *Bundesverwaltungsgericht* [German Federal Supreme Administrative Court] confirmed that opinion, and firmly established that right for Muslim girls (Burtscheidt 1998). A justice on the court, Marion Eckertz-Hoefler, said that the veil was generally permitted. It can only be prohibited if it can be proven that it is being used for the active proselytization of others. A simple conflict between students about the propriety of the scarf was not sufficient to warrant its prohibition. Likewise, based on two decisions by the OVG Münster and the OVG Lüneburg Muslim girls have the right to be excused/exempted from swimming classes if the school cannot organize single-sex P.E. classes (Spies 1993, 638).³⁹

The matter is considered differently for public employees, however. In recent years, several cases have emerged that deal with an adult Muslim woman's right to cover her hair, with most of these cases concerning teachers in public schools. These instances were among the few controversies where secularism, although in the form of negative religious neutrality was actually a concern. The public, political, and legal responses have differed after two high court decisions on the principle of religious neutrality in schools. In the first, the so-called Bhagwan Case (1988), the *Bundesverwaltungsgericht* prohibited teachers from wearing the bright orange garb representative of the religious group, while teaching (Spies 1993, 639). The second, the Crucifix Case (1995) mentioned above firmly established the principle of "negative freedom of religion" in the classroom. It could be argued, so commentators, that a Muslim student might feel compelled to wear her scarf as well, if her teacher wears hers, or a non-Muslim student might feel uncomfortable with the "ostentatious display" of a religious affiliation. This incongruence is a result of Germany's federal system of government. Educational policies are state and not federal matters, and a number of individual states, often school districts within states, have reached different conclusions as to the proper balance of neutrality in schools and the right of freedom of religion, and the right of Muslim women to wear the *foulard*.

³⁹ It is considered remarkable in the literature, that these two courts extended the right to freedom of religion (based on Article 4 of the German Basic Law) to minors and did not explore the question of whether wearing the foulard was a religious duty for Muslims.

For instance, a 44-year-old co-principal at an elementary school in Wuppertal, in the state of Northrhine-Westphalia, Ulrike Thoenes, a native German who converted to Islam, is allowed to wear her large scarf during work.⁴⁰ Yet Amina Burger, a teacher in the same state, who converted to Islam after having taken the oath of loyalty as a Christian (a fact that her principal reminded her of when he discouraged her from filing a lawsuit) is not allowed to cover her hair and has to let her scarf drop on her shoulders like a hood when she teaches. Her case is now pending before a special presidential commission that works with the *Zentralrat der Muslime in Deutschland* [Central Council of Muslims in Germany] on cases involving the infringement of a person's right to freedom of religion (Anon. 1997b).

In the biggest case yet, the Swabian High Court prohibited a young teacher-in-training of Afghan origin and German citizenship, Fereshda Ludin, from taking her teaching exam and teaching in general unless she removed her *foulard* (Lerch 1998, 3). Following the court order, the Swabian minister of culture, Annette Schavan, refused to let her start teaching. The argument was that her students might feel proselytized and uncomfortable with her ostentatious display of her religious belief. Furthermore, so Schavan, in Islamic culture, the scarf was not (!) considered a religious symbol, but a sign "of cultural and civilizational separation." Based on this argument, she would consider the wearing of the scarf as a signal and a violation of the duty to religious neutrality in schools (Anon. 1998b, 37). Despite the fact that none of her students had ever complained about feeling any pressure and she was generally considered a gifted teacher, she was refused employment. Ms. Ludin herself said that she was not fanatically religious but that the scarf was part of her personal identity. This explanation was not sufficient to reverse Ms. Schavan's decision. The case is now pending before the German Constitutional Court (Anon. 1998b, 37).

The reactions to the Ludin case were varied. The silent majority is said to have supported the decision, most commentators, however, lined up on Ludin's side. Even the conservative governor of her home state of Swabia said what mattered was "what is *in* a person's head and not *on* a person's head" (Anon. 1998, 37). To the argument that those involved in public administration, such as teachers or public officials, should avoid any external signs of religious affiliation that could be considered offensive by other citizens, Ludin's supporters correctly pointed to fact that this demand is almost exclusively directed against Muslim women as the wearing of crucifixes, religious habits by nuns, deacons, priests or garb by orthodox Jewish Germans is routinely accepted. So the question of what the clothes teachers wear teach themselves about the teachers poses itself to society. For the backers of a multicultural society, this different standard is a direct indication of the deep-seated dislike and distrust of Islam by many Germans who view these cultural-religious traditions still in terms of a threat from the Balkans, with completely un-European, and definitely un-German, values (Mandel 1989, 38). For most multiculturalists, this interpretation of the propriety of the headscarf is a complete distortion of what pluralism is all about, "the other person may have their ideologies and ideas, but one is not supposed to see them, especially when they are teaching children" (Anon. 1998, 37).⁴¹

Conclusion

⁴⁰ Luckily, Ms. Thoenes has not lost her sense of humor. In an interview she said that sometimes she has to make it clear to workers in school that she is not a cleaning lady but the co-principal.

⁴¹ For a summary of letters to the editor responding to the decision by Annette Schavan, see Anonymous. 1998d. "Die Schule ist Kein Bankschalter." *TAZ*, 27 July.

The comparative consideration of the headscarf affairs and the responses of the courts and the public in either country leaves us with the uneasy feeling that cultural pluralism may be a societal fact, but that it is by no means desired nor fostered by public institutions in France or Germany. It is abundantly clear that neither country is seriously concerned with the protection and affirmative fostering of the rights of cultural minorities. First, in both countries, the question of whether the *foulard* was a constitutive element of Muslim cultural identity that ought to be recognized and entitled to automatic exemptions was never considered. The sole legal basis for the rulings, such as they were, and perhaps wisely so given the political climate, was freedom of religion, the ruling themselves legalistic and not theoretically informed at all. Furthermore, no reference was made to any international minority rights norms.⁴² The rulings in all cases that we considered were rooted purely in domestic laws, thereby confirming my earlier claim that Germany and France do not concern themselves with international frameworks in matters of religious and cultural minorities. Finally, we are faced with evidence, in this case more than anywhere besides ritual slaughter, of the implicit discrimination of Islamic (dress) practices. One must recall that both Germany and France routinely exempt Christian crucifixes and religious garb as well as Jewish yarmulkes, Stars of David, and orthodox Jewish garb from their "ostentatious religious sign" regulations. Muslim women alone have to continuously struggle for recognition of their religious right to wear a *foulard*.

It appears that Abedin and Sardar were right when they said " . . . a French woman with a scarf is chic . . . a Muslim woman with a scarf is a threat to civilization" (1995, 5). It is disheartening that the courts in France and Germany seem to agree with this statement.

IV. Towards a New Model for Multicultural Accommodation

France, since 1789, and Germany, since 1949, have grounded their political existence in the tradition of the Enlightenment and framed their public policies in the spirit of liberalism and tolerance. Historical experiences have committed both countries to extensive constitutional and legal protections for the principles of non-discrimination and religious freedom. Moreover, both countries are contracting parties to international and regional human rights covenants that guarantee extensive rights to resident national, ethnic, linguistic, and religious minorities. As I have shown, however, the social, political and legal reality facing ethnic minority traditions is much less auspicious. The comprehensive protection of the cultural rights of minorities is clearly considered unacceptable by both France and Germany. My analysis of two cultural-religious traditions that have been shown to be of critical importance to the Muslim communities, the recognition of Islamic family law by domestic courts and the right to wear the *hijab*, in the context of the relevant provisions of French and German laws, court decisions as well as the respective public policies yields a picture of two countries whose governments pay lip-service to the intrinsic value of a diverse society yet show minimal willingness to take affirmative steps toward the recognition of specific cultural traditions of immigrant minorities.

First, it is evident that despite comprehensive domestic and international legal minority rights guarantees, the contemporary French and German jurisprudence as well as domestic public policies regarding cultural rights are characterized by an assimilationist, discriminatory, and

⁴² The *Conseil d'Etat* never considered minority rights. It did, however, consider Article 8 of the ECHR in its first *avis* in 1989.

haphazard approach. This approach is reflective of the tensions between civic self-definitions, international human rights commitments and the need to come to terms with a multicultural social reality essentially at odds with the fundamental national political ideologies. With very few exceptions, France's policies towards Islam remain fundamentally assimilationist and secularist. For instance, in deference to a 1905 law establishing the firm separation of church and state, France still does not permit the establishment of Muslim cemeteries. Likewise, no national law explicitly allows Muslim girls to wear the Islamic headscarf to school or Muslim women to work. Similarly in Germany, public policies and court decisions continue to implicitly portray the desire by Muslim girls and women to wear the *hijab*, or the applications by Muslim butchers to permit the ritual slaughter of animals as examples of the intrinsic non-Germanness of Islam and the unwillingness and/or inability of Muslim immigrants to assimilate into German society.

This stands in contrast to the pragmatism and unexpected flexibility toward Muslim family law that courts have shown in both countries, permitting--at times, even aiding in the enforcement of--the Islamic *talaq* divorce, polygamy, and the *kafalah*, and recognizing the domestic civil consequences of these practices. It is important to stress that the courts did not seek to endorse the intrinsic value of the perpetuation of a cultural tradition through their rulings. Instead, they grounded their decisions firmly in their obligations under international private law and bilateral agreements. Nonetheless, considering the general assimilationist climate, it is remarkable that courts, given the opportunity to do so, did not reject those practices often considered synonymous with "alien Islamic traditions," polygamy and the *talaq*, as contrary to the domestic public order.

Second, my study exposed the implicit legal and political discrimination against Muslim minority rights claims. Muslims are regularly denied exemptions and accommodations that, for instance, the Jewish communities in both countries have enjoyed for many decades, even centuries. Cases in point in both countries are the right to wear traditional religious garb, and, additionally, the right to ritually slaughter animals unstunned as well as the establishment of religious cemeteries. Both France and Germany routinely grant orthodox Jewish communities, a minority within the Jewish faith, exemptions from a general prohibition to slaughter animals unstunned, in accordance with Jewish religious law. Muslim communities in both countries are routinely denied the same right for essentially the same practice, despite that fact that a substantial minority considers the slaughter of unstunned animals a religious prescription. Likewise in both countries, Jewish communities (and, in Germany, Catholic communities as well) have been granted the right to administer their own religious cemeteries for centuries. Muslims, with the exception of the states of Berlin and Hamburg (Schütt 1998), are not allowed to do so, despite the fact that they are the second largest religious community in France, after Catholicism, and the third largest community in Germany, after Protestants and Catholics. Furthermore, Christian religious dress and symbols as well as Jewish religious garb is routinely exempted in France and Germany from prohibitions against "ostentatious" religious symbols and dress. Only Muslim girls and women have to consistently defend their religious right and duty to wear a headscarf to school and work, despite the fact that a crucifix on a necklace, a *kippa*, or a cross in a courtroom may appear as ostentatious and offensive to a non-Christian or gentile.

I wish to stress again that I argue in no way for the revocation of exemptions for the Jewish and other religious communities, not for traditional religious dress, ritual slaughter, or cemeteries. However, I do wish to draw attention to the obvious application of different standards for different religious communities that stands in contrast to the professed commitments to non-discrimination and religious freedom, and argue for an extension of the legal exemptions to the resident immigrant Muslim communities that other religious groups have

enjoyed for decades. These extensions are necessitated by basic principles of non-discrimination, freedom of religion, and the right to practice one's culture, that are all rooted firmly in domestic laws and international human rights covenants to which France and Germany are contracting parties.

This brings us to the normative question that motivated this study. How should courts respond to cultural rights claims, and what should be the limits of tolerance? I want to repeat that there are no magic formulas and no one-size-fits-all solutions. However unsatisfactorily it may sound, in many instances the questions that arise will need to be dealt with on a case-by-case basis. Nonetheless, based on the evidence provided by the four case studies, I have developed a few suggestions that may prove useful for a more equitable treatment of cultural rights claims.

The late Sebastian Poulter, a brilliant British legal scholar, whose work has greatly influenced my own thinking, was the only scholar to combine political theory and international law and put the answer to the question of cultural pluralism, i.e. which cultural rights ought to be protected and how, into the framework of international human rights law (Poulter 1998, 1987). He developed a simple yet efficient model arguing that all cultural minority traditions should be recognized (in his case, in England) as long as they are not "obviously repugnant" (Poulter 1987, 595) and do not violate international human rights norms of treaties to which the host country is a contracting party. For instance, under the right to freedom of religion Jews would be permitted to ritually slaughter their animals (1998, chap. 5), yet a child's right to education (Article 2 of the First Protocol to the *European Convention on Human Rights*) would trump the right of gypsy parents to take their children out of public school prematurely so as to familiarize them with their own nomadic lifestyle (Poulter 1987, 600-1). This dual approach lets Poulter take into account domestic legal considerations while simultaneously mitigating possible biases against unfamiliar immigrant practices by using internationally agreed human rights norms as the standard for decision/evaluation. Nonetheless, there are several problems with Poulter's approach, mainly his reliance on the colonial "repugnancy" clauses to characterize a tradition (Poulter 1987, 595), and, second, his reliance on specifically Western (European) human rights conventions against which the traditions of non-European cultural minorities are measured. First, recall that any tradition that is considered "obviously repugnant" by the standards of the country of immigration, such as slavery, the *suttee*, cannibalism or the amputation of limbs for criminal offenses, as practiced in many Muslim countries would be rejected. Second, the remaining customs in question are measured against international human rights treaties to which the host country is a contracting party. Any practice that runs counter to any of the human rights norms contained in such covenants, like gender equality, the right to education, or the freedom to marry the partner of one's choice, would not enjoy domestic legal recognition. However, Poulter would leave some latitude to courts to evaluate borderline cases, such as polygamous marriages contracted abroad or the right to single-sex schools, to avoid injustice or the suffering of those individuals, for instance, by a refusal to send a Muslim daughter to school at all, that the laws sought to protect in the first place.

I find Poulter's human rights approach very useful for four reasons. First, the reliance on international agreements that reflect a wider, less parochial consensus on issues permits minority communities and judges to avoid, at least in part, national biases and prejudices both for the formulation and the evaluation of a cultural rights claim. Second, if a country rejects a claim by an ethnic minority it may be able to deflect accusations of bias and prejudice, which are inevitable if a ruling is based solely on domestic standards, by referring to an international consensus, perhaps even embraced by the plaintiff's country of origin, against a certain practice. Third, in directly invoking in their claim specific norms contained in international (or regional)

human rights treaties, minority plaintiffs leave the door open to bring their case before an international forum, such as the European Court of Human Rights or the U.N. Committee on Human Rights, in form of an individual petition. Since many countries have shown to be wary of the negative publicity such proceedings engender, especially in the highly charged atmosphere of religious freedom, such a strategy may cause a state to be more willing to contemplate a compromise. Fourth, in setting minority rights claims on a human rights basis, especially religious rights, communities make it much more difficult for domestic courts to differentiate between national and immigrant minorities, as Will Kymlicka (1995) advocates, when evaluating rights claims, as they are able to do when using domestic constitutional clauses and the legal status of immigrant groups.

Given the considerable advantages a human rights strategy may bring for the state and the minority group, the haphazard approaches to cultural minority rights claims both sides have chosen in both countries is rather surprising. Neither minority communities nor policymakers or courts were guided in the formulation of their demands and their reactions to these claims by any consistent intellectual framework. To the best of my knowledge, no claim for the recognition of any of the traditions that I examined in this study relied on international human rights norms, such as the right to culture, as guaranteed in Article 27 of the ICCPR and Article 5 of the *Framework Convention for the Protection of National Minorities*, or the right to religious freedom, protected by the *United Nations Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief*, Article 18 of the ICCPR, and Article 9 of the ECHR. Nor did any of the courts grant or reject claims based on international human rights standards, such as the prohibition of discrimination based on gender for the question of the headscarf, polygamy, or the *talaq* divorce, or on the rights and freedoms of others, for the question of the permissibility of the ritual slaughter of unstunned animals. Solely in the very first headscarf case to reach the French *Conseil d'Etat* as a result of the controversy in Creil, did the court invoke Article 9 of the ECHR, protecting the right to religious freedom, as one of the bases for its decision to refuse a general prohibition of the right of Muslim girls to wear the *hijab* to school. In the other cases both French and German courts have instead relied on domestic "repugnancy standards" to reject claims, as in the case of ritual slaughter, the public order, for several *talaq* cases, and more general assimilationist standards couched in terms of a "negative freedom of religion" in various lawsuits involving the Islamic headscarf.

I believe that if the British experience is any indication, as Poulter (1998) has shown, the reliance by minority communities on any of these human rights norms in legal cases, but particularly the right to religious freedom, could have produced very different outcomes, and the recognition of a number of religious traditions. Therefore, I argue that a more equitable, yet also more effective, approach towards the accommodation of cultural rights claims and the ascertainment of the validity of a practice ought to be set on a more expansive legal basis that takes into account three factors.

First, despite public professions of the inherent value of a culturally diverse society, neither France nor Germany has given any indication that it is willing to accommodate, let alone acknowledge, a right to culture of immigrant groups. In fact, courts and policymakers in both countries have steadfastly denied any recognition of a person's cultural identity as a legally enforceable right. However, under certain circumstances, courts have been willing, as in the *hijab* cases, to protect specific customs as expressions of a religious belief that are guaranteed by domestic and international guarantees to religious freedom. Therefore, judges open to a more equitable treatment of cultural minority claims and minority communities ought to be able to reach common ground by making use of those international articles that guarantee the right to religious freedom, Article 18 of the ICCPR, Article 8 of the ECHR and/or the (non-binding)

U.N. *Declaration on the Elimination of all Forms of Religious Discrimination*. This strategy permits ethnic minorities in France to sidestep the reservation by the French government against Article 27 of the ICCPR, and Muslims in Germany to bypass the German reservation against Article 5 of the *Framework Convention*. Likewise both countries, hesitant to collectively empower minority groups through the recognition of a right to culture, may be willing to grant more extensive recognitions of cultural traditions on the basis of religious freedom.

Second, Poulter's reliance on specifically Western (European) human rights conventions against which the traditions of non-European cultural minorities are measured is problematic. When considering the rights of immigrant minorities, one must not forget that we are concerned with traditions that run counter to the Western understanding of what is "right" and "proper." If the practices were similar to our own, we would not have a debate about them. But by relying on Western human rights treaties, particularly regional ones, such as the ECHR, to appraise non-Western cultural traditions, we fall into exactly the same assimilationist trap that we sought to avoid in the first place and simply transpose domestic neo-repugnancy standards to the international level. Therefore, I propose that, when applicable, domestic courts take into account the provisions of non-Western regional human rights treaties, such as the *African Charter on Human and People's Rights* or the *Universal Islamic Declaration of Human Rights*, that cover the area of origin of an individual or minority group in question, should a case arise in which Western human rights norms and non-Western human rights provisions conflict. A case in point could be a case involving gender equality. Alternatively, for instance in cases about cultural traditions and the best interests of the child, the ratification (and any reservations) of other international human rights, such as the *Convention on the Rights of the Child*, by an individual's country of origin may also serve as supplementary evidence for a court decision.

Third, in more specific cases, such as ritual scarring or specific tribal customs, such as marriage or traditional healing practices, the courts should consider if the domestic laws, codified and customary, of the country of origin of the individual(s) concerned allow a certain practice. If they do, then the courts in the host country should be willing to recognize the practice as well. For instance, a German court was willing to consider a Togolese tribe's marriage customs, recognized by Togo's domestic laws, in deciding whether a valid marriage had been concluded. While it did not recognize the validity of the marriage because the couple had misrepresented crucial facts to the court, the approach the court has taken in trying to ascertain the authenticity of the claim was exemplary of the approach I think all courts ought to take.⁴³

Invariably, doubts arise if such a broad approach will not force upon countries of immigration the legal recognition of practices such as the *suttee*, female genital mutilation, the amputation of limbs for theft, honor killings, or the mercy killings of old people that are permissible in a large number of countries in Africa and Asia. The question is legitimate, and the answer is no. I do not argue for an unlimited right to culture or the recognition by courts of any and all claims advanced in the name of protecting a religious or cultural tradition. In my opinion, following John Stuart Mill, the appropriate standards against which practices should be measured are those of either "irreparable harm," as advocated by Alison Dundes Renteln (1994), or the stricter "permanent physical or *psychological* change" that I advocate personally. On these bases, any practice that would cause an individual irreparable physical harm, such as female genital mutilation, honor killings or amputations, would be prohibited. However, I think that this standard should be expanded to include any psychological injuries practices such as child marriage with forcible intercourse, the arranged marriages of minors, or polygamous

⁴³ Togolese Marriage case. StAZ 1995: 294. LG Nürnberg-Fürth - 13 T 10603/94. Date decided: 18 January 1995.

marriages concluded domestically⁴⁴ may have on the young women concerned because it can be argued that the consequences of a simple form of clitoridectomy are minor compared to the trauma suffered by a ten-year-old girl forced to marry an older man and obligated to endure sexual relations and frequent pregnancies at such an early age.

A critic might argue that the standard that I propose is just a less obvious form of a traditional repugnancy clause, as the simple choice of the word "harm" to characterize a practice implies an *a priori* judgment on the value of this particular custom. To that I respond that the recognition of a human right to culture does not logically compel us to normatively recognize each and every practice as equally valid and equally deserving of protection. That would be a flawed relativist argument, as Renteln (1990) showed. The human right to culture does not trump all other human rights, such as the right to life or bodily integrity, just as the right to gender equality does not always trump the right to culture or freedom of religion. In a culturally diverse society, the respective rights must be balanced against one another and the common standard should be the one that ensures the least intrusion into cultural minority traditions while protecting the physical and psychological well-being (or even survival) of the most vulnerable members of each and every group. I believe the criteria that Renteln (1994) has proposed and that I expanded upon are the most appropriate standards for the recognition of cultural minority rights claims.

The premise of this project is that culture matters. As we have seen, France and Germany are reluctant to recognize the need to protect cultural traditions even if they are constitutive to the way of a life of a religious minority. Nonetheless, the social fact remains that both countries are culturally pluralistic and likely to remain so, characterized by an ethnic, religious, linguistic and cultural mosaic and the increasing appreciation by ethnic groups of their cultural heritage and a concern for the preservation of distinctive customs and traditions. It is now up to France and Germany to decide whether they wish to remain entrenched in outdated political ideals of socio-cultural homogeneity or optimistically embrace the spirit of a multicultural European future.

Bibliography

Ahsan, Manazir. 1995. "The Muslim Family in Britain." In *God's Law Versus State Law: Construction of an Islamic Identity in Western Europe*, ed. Michael King. London: Grey Seal Books. Pp. 27-48.

Aldeeb Abu-Salieh, Sami A. 1997. "Conflits Entre Droit Religieux et Droit Étatique Chez les Musulmans Dans les Pays Musulmans et en Europe." *Revue Internationale de Droit Comparé* 49 (4): 813-34.

Anoussamy, David. 1998. "Commentaire: Cour de Cassation (1re Cha. Civ.) - 7 avril 1998. M.A.B. Hamidou c. Mme. M. Razack." *Revue Critique de Droit International Privé* 87 (4): 644-51.

Anonymous. 1994. "Voile Islamique: le Tribunal Administratif d'Amiens Censure le Refus d'Inscrire Deux Elèves." *Le Monde*, 24 October.

Anonymous. 1995a. "Voile Islamique." *Le Monde*, 1 April.

⁴⁴ The civic consequences of such polygamous marriages concluded abroad are already recognized to protect the legal interests of the co-wives and children.

- Anonymous. 1995b. "Le Foulard et Ses Multiples Motivations." *Le Monde*, 13 March.
- Anonymous. 1995d. "Foulard Islamique à l'Ecole: Exclusion Confirmée pour Deux Jeunes Filles." *Agence France Presse*, 10 March.
- Anonymous. 1995e. "Foulard." *Le Monde*, 21 September.
- Anonymous. 1995f. "Al-Azhar Denonce un Contrat de Mariage Protégéant la Femme de la Polygamie." *Agence France Presse*. N.d.
- Anonymous. 1995g. "Réponse du Ministre, JO déb. Sénat, Questions, 3 août 1995, p. 1549. Polygamie. Condition des Étrangers en Situation Polygamique." *Revue Critique de Droit International Privé* 84 (4): 879.
- Anonymous. 1995h. "Jurisprudence: Enseignement Public. Laïcité et Liberté Religieuse. Port de Signes Religieux. Conditions." *L'Actualité Juridique - Droit Administratif* 332-5.
- Anonymous. 1995i. "Conclusions des Commissaires du Gouvernement. Conclusions de M. Martinez (re: Mlle Aysel Aksirin c. Recteur de l'Académie de Strasbourg)." *Revue Du Droit Public et de la Science Politique en France et à l'Étranger* 3 (5): 1348-69.
- Anonymous. 1997a. "Wieviel Anpassung Für Europas Muslime? Die Erbitterte Diskussion um Kopftücher, Friedhöfe und Moscheen." *Neue Zürcher Zeitung*, 22 March.
- Anonymous. 1998a. "Was Lehren Lehrerkleider? Toleranzfragen - Deutschland im Kopftuchstreit." *Neue Zürcher Zeitung*, 22 July.
- Anonymous. 1998b. "Die Schule Ist Kein Bankschalter." *TAZ*, 27 July.
- Anonymous. 1998c. "Die Anderen Akzeptieren." *Süddeutsche Zeitung*, 23 July.
- Anonymous. 1999a. "Black, Blanc, Beur. France is a Melting Pot but Refuses to Accept It." *The Economist*, 5 June.
- Anonymous. 1999b. "Foulard à l'École: La Médiatrice Déploire le Durcissement des Attitudes." *Le Monde*, 11 January.
- Anonymous. 2000a. "Education: Une Surveillante d'Établissement Scolaire ne Doit Pas Porter le Foulard Durant l'Exercice de Ses Fonctions." *Le Monde*, 9 May.
- Anonymous. 1990. "Sur La Politique Française de l'Immigration. Entretien Avec Patrick Weil." *Le Débat* 58 (janvier/février): 57-65.
- Apel, Karl-Otto. 1995. "Anderssein, ein Menschenrecht? Über die Vereinbarkeit Universaler Normen und Ethnischer Vielfalt." In *Anderssein, ein Menschenrecht. Über die Vereinbarkeit Universaler Normen und Ethnischer Vielfalt*, ed. Hilmar Hoffmann and Dieter Kramer. Weinheim: Beltz - Athenäum. Pp. 9-19.

- Badinter, Elisabeth, et al. 1989. "Profs, Ne Capitulons Pas!" *Le Nouvel Observateur*, 2-8 November.
- Baines, Cynthia DeBula. 1996. "L'Affaire des Foulards - Discrimination, or the Price of a Secular Public Education System." *Vanderbilt Journal of Transnational Law* 29: 303-27.
- Barbier, Stéphane. 1994. "Affaire du Foulard: La Tension Monte." *Le Monde*, 5 October.
- Basdevant-Gaudemet, Brigitte. 1996. "Le Statut Juridique de l'Islam en France." *Revue Du Droit Public et de la Science Politique en France et à l'Étranger* 2: 355-84.
- Basson, Lauren. 1996. "Redefining Membership in the French Nation and State: Franco-Maghrebians and the Question of Identity." Presented at the Annual Meeting of the Western Political Science Association, San Francisco.
- Bauböck, Rainer. 1996. "Cultural Minority Rights for Immigrants." *International Migration Review* 30 (1): 203-50.
- Beitzke, Günther. 1993. "Scheidung Sunnitischer Libanesen." *IPrax* 13 (4): 231-36.
- Béji, Hélé. 1990. "Radicalisme Culturel et Laïcité." *Le Débat* 58 (janvier/février): 45-9.
- Bélorgey, Jean-Michel. 1999. "Laïcité, Religions, Spiritualités, Sectes." *Regards Sur l'Actualité* 249 (mars): 39-51.
- Bernard, Philippe. 1995. "La France Intègre avec une Relative Facilité les Immigrés et Leurs Enfants." *Le Monde*, 23 March.
- Beule, Dieter. 1988. "Ein Verstoß gegen das Scheidungsmonopol der Deutschen Gerichte?" *IPrax* 8 (3): 150-73.
- Billah, Muhammad Masum. 1995. "Polygamy: Refuting Some Misconceptions." *The Muslim World League Journal* 23 (1): 42-4.
- Binswanger, Karl. 1990. "Islamischer Fundamentalismus in der Bundesrepublik. Entwicklung - Bestandsaufnahme - Ausblick." In *Im Namen Allahs: Islamische Gruppen und der Fundamentalismus in der Bundesrepublik Deutschland*, ed. Bahman Nirumand. Köln: Dreisam Verlag. Pp. 38-54.
- Brubaker, Rogers, ed. 1989. *Immigration and the Politics of Citizenship in Europe and North America*. Washington, DC: German Marshall Fund of the United States and the University Press of America.
- Brubaker, Rogers. 1992. *Citizenship and Nationhood in France and Germany*. Cambridge, MA and London, England: Harvard University Press.

- Budzinski, Manfred. 1999. *Die Multikulturelle Realität. Mehrheitsherrschaft und Minderheitenrechte*. Göttingen: Lamuv Verlag.
- Burtscheidt, Christine. 1998. "Wo Welten Aufeinanderprallen." *Süddeutsche Zeitung*, 20 March.
- Buttar, A. P. 1987. "The Needs of Muslim Minorities in the Legal Sphere." *The Muslim World League Journal* 14: 34-40.
- Campt, Tina M. 1993. "Afro-German Cultural Identity and the Politics of Personality: Contests and Contexts in the Formation of a German Ethnic Identity." *New German Critique* 58 (Winter): 109-26.
- Carroll, Lucy. 1997. "Muslim Women and "Islamic Divorce" in England." *Journal of Muslim Minority Affairs* 17 (1): 97-115.
- Cessou, Sabine. 1995. "Immigration en France: La Fin des Préjugés." *JAE*, May.
- Chimelli, Rudolph. 1994. "Der Krieg der Kopftücher Gegen Gott ist Gross, Mitterrand ist Klein." *Süddeutsche Zeitung*, 28 October.
- Chirane, Abdelhamid. 1995. "Conflict and Division Within Muslim Families in France." In *God's Law Versus State Law: Construction of an Islamic Identity in Western Europe*, ed. Michael King. London: Grey Seal Books. Pp. 16-20.
- Coester, Michael. 1996. "Gambische Scheidung, Deutsche Sorgerechtsregelung." *IPrax* 16 (1): 24-6.
- Cohn-Bendit, Daniel. 1992. *Heimat Babylon: Das Wagnis der Multikulturellen Demokratie*. Hamburg: Hoffman und Kampe.
- Costa-Lascoux, Jacqueline. 1994. "Les Lois "Pasqua": Une Nouvelle Politique de l'Immigration?" *Regards Sur l'Actualité* 199 (mars): 19-43.
- Crossette, Barbara. 1999. "Testing the Limits of Tolerance as Cultures Mix. Does Freedom Mean Accepting Rituals That Repel the West?" *The New York Times*, 6 March.
- Delattre, Lucas. 1997. "L'Islam en Allemagne Plus Toléré qu'Intégré." *Le Monde*, 18 February.
- Déprez, Jean. 1996. "Statut Personnel et Pratiques Familiales des Étrangers Musulmans en France. Aspects de Droit International Privé." In *Familles-Islam - Europe. Le Droit Confronté au Changement*, ed. Marie-Claire Foblets. Paris: L'Harmattan. Pp. 57-81.
- Deutscher Bundestag. 1999. Grosse Anfrage - Drucksache 14/2301, December 1. By Dr. Jürgen Rüttgers CDU/CSU et al.
- Dierbach, Heike. 2000. "Enklaven Sind Unerwünscht." *TAZ*, 24 January.

- Dietrich, Stefan. 1999. "Das Massaker von Bielefeld war eine Beziehungstat." *Frankfurter Allgemeine Zeitung*, 11 November.
- Doomernik, Jeroen. 1995. "The Institutionalization of Turkish Islam in Germany and the Netherlands." *Ethnic and Racial Studies* 18 (1): 46-63.
- Drobinski, Matthias. 1998. "Reden Über den Islam." *Süddeutsche Zeitung*, 7December.
- Ehringfeld, Klaus. 1997. *Eltern-Kind-Konflikte in Ausländerfamilien. Untersuchung der Kulturellen Divergenzen Zwischen Erster und Zweiter Ausländergeneration und der Rechtlichen Steuerung Durch das Nationale und Internationale Familienrecht*. Berlin: Duncker and Humblot.
- El-Husseini, Roula. 1999. "Le Droit International Privé Français et la Répudiation Islamique." *Revue Critique de Droit International Privé* 88 (3): 427-68.
- Falga, Bernard, Catherine Wihtol de Wenden, and Claus Leggewie, eds. 1994. *De l'Immigration à l'Intégration en France et en Allemagne*. Paris: Les Éditions du CERF.
- Fassin, Eric. 1996. "Two Cultures? French Intellectuals and the Politics of Culture in the 1980s." *French Politics and Society* 14 (2): 9-16.
- Favell, Adrian. 1998. *Philosophies of Integration. Immigration and the Idea of Citizenship in France and Britain*. Houndsmills, London and New York: Macmillan Press and St. Martin's Press.
- Feldblum, Miriam. 1999. *Reconstructing Citizenship. The Politics of Nationality. Reform and Immigration in Contemporary France*. Albany, NY: State University of New York Press.
- F.K. 2000. "Les Familles Polygames en France Mises au Pied du Mur Eclairage." *SDA-Service de Base Français*, 12 January.
- Foblets, Marie-Claire, ed. 1996. *Familles- Islam - Europe. Le Droit Confronté au Changement. Musulmans d'Europe*. Paris: L'Harmattan.
- Fossaert, Robert. 1990. "Pour une Géopolitique de la Laïcité." *Hérodote* 56 (janvier-mars): 8-13.
- Frank, Susanne. 1995. *Staatsräson, Moral und Interesse: Die Diskussion um die "Multikulturelle Gesellschaft" 1980-1993*. Freiburg im Breisgau: Lambertus.
- Frankenberg, Günther. 1992/93. "Fremde in Deutschland. Stichworte zur Alchemie von Recht und Fremdheit." *Transit* 5 (Winter): 123-39.
- Freeman, Gary P. 1995. "Modes of Immigration Politics in Liberal Democratic States." *International Migration Review* 29 (4): 881-902.
- Galeotti, Anna Elisabetta. 1993. "Citizenship and Equality. The Place for Toleration." *Political Theory* 21 (November): 585-605.

- Gannagé, Pierre. 1997. "Commentaire: M. X. c. Mme. Y." *Revue Critique de Droit International Privé* 86 (1): 41-55.
- Gaspard, Françoise and Farhad Khosrokhavar. 1995. *Le Foulard et la République*. Paris: Éditions la Découverte.
- Gebauer, Klaus. 1999. "Islam Made in Germany." *Focus*, March 22.
- van Gent, A. 1998. "Perücke Statt Kopftuch fuer Türkische Studentinnen." *Neue Zürcher Zeitung*, 14 August.
- Gillette, Isabelle. 1993a. *La Polygamie en France et le Rôle des Femmes*. Paris: Edition G.A.M.S.
- Gillette-Frénoy, Isabelle. 1993b. "La Polygamie en France Pratiquée par les Immigrants d'Afrique Subsaharienne, et le Rôle des Femmes." *L'Ethnographie* 89 (2): 131-69.
- Guiraudon, Virginie. 1996. "The Reaffirmation of the Republican Model of Integration: Ten Years of Identity Politics in France." *French Politics and Society* 14 (2): 47-56.
- Hargreaves, Alec G. 1995. *Immigration, "Race", and Ethnicity in Contemporary France*. London and New York: Routledge.
- Haut Conseil à l'Immigration. 1992. *Conditions Juridiques et Culturelles de l'Intégration*. Paris: La Documentation Française.
- Heldrich, Andreas. 1983. "Das Juristische Kuckucksei aus dem Morgenland." *IPrax* 3 (2): 64-5.
- Henrich, Dieter. 1995. "Scheidung Wegen Unterhaltsverweigerung nach Islamischem Recht." *IPrax* 15 (3): 166-77.
- Herfarth, Christoph. 2000. "Scheidung Nach Religiösem Recht Durch Deutsche Gerichte." *IPrax* 20 (2): 101-3.
- Herrmann, Helga, and Wolfgang Kramer. 1994. *Deutschland-Ausländerfeindlich Oder Multikulturell?* Köln: Deutscher Instituts-Verlag.
- Heßler, Hans-Joachim. 1988. "Islamisch-Rechtliche Morgengabe: Vereinbarter Vermögensausgleich im Deutschen Scheidungsrecht." *IPrax* 8 (2): 95-7.
- Higonnet, Patrice. 1998. *Goodness Beyond Virtue. Jacobins During the French Revolution*. Cambridge: Harvard University Press.
- Hunt, Lynn. 1984. *Politics, Culture, and Class in the French Revolution*. Berkeley: University of California Press.
- Ireland, Patrick. 1996. "Vive le Jacobinisme: Les Étrangers and the Durability of the Assimilationist Model in France." *French Politics and Society* 14 (2): 33- 46.

- Jayme, Erik. 1989. "‘Talaq’ Nach Iranischem Recht und Deutscher Ordre Public." *IPrax* 9 (4): 223-4.
- Jayme, Erik. 1999a. *Religiöses Recht vor Staatlichen Gerichten*. Heidelberg, Universitätsverlag C. Winter.
- Jayme, Erik. 1999b. "Islamisches Recht und Westliche Gerichte." *IPrax* 19: 59-60.
- Jelen, Christian. 1993. "La Polygamie en France." *Le Point*, October 2.
- Julia, Dominique. 1990. "La République, l'Église et l'Immigration. La Laïcité dans l'Histoire." *Le Débat* 58 (janvier/février): 34-7.
- Kaltenbach, Jeanne-Hélène, and Pierre-Patrick Kaltenberg. 1991. *La France. Une Chance Pour l'Islam*. Paris: Éditions du Félin.
- Karakasoglu, Yasemin. 1996. "Die Bestattung von Muslimen in der Bundesrepublik aus der Sicht Türkisch-Islamischer Organisationen." In *In Fremder Erde. Zur Geschichte und Gegenwart der Islamischen Bestattung in Deutschland*, ed. Gerhard Jöpp and Gerdien Jonker. Berlin: Verlag Das Arabische Buch. Pp. 83-105.
- Kelber, Richard, and Christa Will. 1993. *Ein Phanton Geht Um - Multikulturelle Stadt als Realität, Notwendigkeit und Ziel*. München und Dortmund: Verlag Gockel/Klein.
- Keller, Perry. 1998. "Re-Thinking Ethnic and Cultural Rights in Europe." *Oxford Journal of Legal Studies* 18 (1): 29-60.
- Kepel, Gilles. 1994. "Islam in Europa. Zwischen Gemeinschaft und Gesellschaft." *Transit* 7 (Spring): 61-7.
- King, Michael, ed. 1995. *God's Law Versus State Law: Construction of an Islamic Identity in Western Europe*. London: Grey Seal Books.
- Kistenfeger, Hartmut. 1997. "Grundrechte. Angst vor dem Kopftuch." *Focus*, August 4.
- Koopmans, Ruud. 1999. "Challenging the Liberal Nation-State? Postnationalism, Multiculturalism, and the Collective Claims Making of Migrants and Ethnic Minorities in Britain and Germany." *American Journal of Sociology* 105 (3): 652-96.
- Kotzur, Hubert. 1988. *Kollisionsrechtliche Probleme Christlich-Islamischer Ehen Dargestellt am Beispiel Deutsch-Maghrebinischer Verbindungen*. Tübingen: J.C.B. Mohr
- Kukathas, Chandran. 1992a. "Are There Any Cultural Rights?" *Political Theory* 20 (February): 105-39.
- Kukathas, Chandran. 1992b. "Cultural Rights Again: A Rejoinder to Kymlicka." *Political Theory* 20 (November): 674-80.

- Kymlicka, Will. 1991. "Liberalism and the Politicization of Ethnicity." *Canadian Journal of Law and Jurisprudence* 4 (July): 239-56.
- Kymlicka, Will. 1992. "The Rights of Minority Cultures: Reply to Kukathas." *Political Theory* 20 (February): 140-6.
- Kymlicka, Will, ed. 1995a. *The Rights of Minority Cultures*. Oxford and New York: Oxford University Press.
- Kymlicka, Will. 1995b. *Multicultural Citizenship. A Liberal Theory of Minority Rights*. Oxford: Clarendon Press.
- Kymlicka, Will. 1996b. "The Good, the Bad and the Intolerable." *Dissent* (Summer): 22-30.
- Lacoste-Dujardin, Camille. 1990. "Les Fichus Islamistes: Approche Ethnologique d'une Stratégie d'Anti-Intégration." *Hérodote* 56 (janvier-mars): 14-44.
- de Lajartre, Arnaud. 1995. "Note de Jurisprudence: Le Port de Signes Religieux dans les Établissements Scolaires (C.E., 14 mars 1994, Yilmaz)." *Revue Du Droit Public et de la Science Politique en France et à l'Étranger* 3(1): 221-50.
- Lapeyronnie, Didier. 1993. *L'Individu et les Minorités. La France et la Grande-Bretagne Face à Leurs Immigrés*. Paris: Presses Universitaires de France.
- Le Goff, Jacques. 1990. "Derrière le Foulard, l'Histoire." *Le Débat* 58 (janvier/février): 21-33.
- Leggewie, Klaus. 1993. "Vom Deutschen Reich zur Bundesrepublik--und Nicht Zurück. Zur Politischen Gestalt einer Multikulturellen Gesellschaft." In *Schwierige Fremdheit. Über Integration und Ausgrenzung in Einwanderungsländern*, ed. Friedrich Balke et al. Frankfurt: Campus Verlag. Pp. 45-83.
- Lemoine, Philippe. 1999. "Un Collège de Flers (Orne) Se Met en Grève Contre le Port du Foulard Islamique." *Le Monde*, 8 January.
- Lerch, Wolfgang Günther. 1998. "Das Kopftuch Ist im Islam Mehr als nur ein Stück Stoff." *Frankfurter Allgemeine Zeitung*, 17 July.
- Leruth, Michael F. 1998. "The Neorepublican Discourse on French National Identity." *French Politics and Society* 16 (4): 46-61.
- Levy, Jacob T. 1997. "Classifying Cultural Rights." In *Ethnicity and Group Rights*, ed. Ian Shapiro and Will Kymlicka. New York and London: New York University Press. Pp. 22-68.
- Mahmood, Tahir. 1992. "No More 'Talaq, Talaq, Talaq': Juristic Restoration of the True Islamic Law on Divorce." *Islamic and Comparative Law Review* 12 (1): 1-12.

- Mandel, Ruth. 1989. "Turkish Headscarves and the 'Foreigner Problem': Constructing Difference Through Emblems of Identity." *New German Critique* 46 (Winter): 27-46.
- Mecheril, Paul, and Thomas Teo, eds. 1994. *Andere Deutsche. Zur Lebenssituation von Menschen Multiethnischer und Multikultureller Herkunft*. Berlin: Dietz Verlag.
- Meister, Ulrich. 1994. "Ein Neuer Tschadorkrieg in Frankreich? Erziehungsminister Bayrous Dekret Gegen Religiöse Insignien." *Neue Zürcher Zeitung*, 22 September.
- Meyer-Bisch, Patrice, ed. 1993. *Les Droits Culturels. Une Catégorie Sous-Développée de Droits de l'Homme*. Série "Droits de l'Homme." Fribourg, Switzerland: Éditions Universitaires.
- Monnet, Jean-François. 1990. "A Creil, l'Origine de l'Affaire des Foulards." *Hérodote* 56 (janvier-mars): 45-54.
- de la Morena, Frédérique. 2000. "Libertés Publiques. Liberté Religieuse. Manifestation de Croyances Religieuses. Port de Foulard Islamique. Incompatibilité avec le Bon Déroulement de l'Activité de l'Enseignement. Légalité de l'Exclusion de l'Établissement." *L'Actualité Juridique - Droit Administratif* (20 février): 165-9.
- Morin, Edgar. 1990. "Le Trou Noir de la Laïcité." *Le Débat* 58 (janvier/février): 38-41.
- Moruzzi, Norma Claire. 1994a. "A Response to Galeotti." *Political Theory* 22 (3): 678-9.
- Moruzzi, Norma Claire. 1994b. "A Problem With Headscarves. Contemporary Complexities of Political and Social Identity." *Political Theory* 22 (November): 653-72.
- van Nahme, Joachim et al. 1993. "Un Debat Franco-Allemand. De la Nation Ethnique à la Nation Citoyenne." *Le Monde*, 3 July.
- Noiriel, Gérard. 1988. *Le Creuset Français. Histoire de l'Immigration XIX-XXe Siècles*. Paris: Seuil.
- Noormann, Jörg. 1994. "Städtische Minderheitenpolitik in Frankfurt a.M. Lösungsansatz für Institutionell Bedingte Kooperations-und Leistungsdefizite." In *Politik der Multikultur. Vergleichende Perspektiven zu Einwanderung und Integration*, ed. Mechthild M. Jansen and Sigrid Baringhorst. Baden-Baden: Nomos. Pp. 75-85.
- Peach, Ceri, and Günther Glebe. 1995. "Muslim Minorities in Western Europe." *Ethnic and Racial Studies* 18 (1): 26-45.
- Poisson-Drocourt, E. 1993. "Note: Décision du Tribunal de Grande Instance Paris, 5 Février 1992." *Revue Critique de Droit International Privé* 1: 251.
- de Poulpiquet, Valérie. 1997. "Note de Jurisprudence. Laïcité, Obligations d'Assiduité et Pratique Religieuse dans les Établissements Publics d'Enseignement (CE, Ass., 14 Avril 1995, M. Koen)." *Revue Du Droit Public et de la Science Politique en France et à l'Étranger* 1783-1806.

- Poulter, Sebastian. 1986. *English Law and Ethnic Minority Customs*. London: Butterworths.
- Poulter, Sebastian. 1987. "Ethnic Minority Customs, English Law and Human Rights." *International and Comparative Law Quarterly* 36 (3): 589-615.
- Poulter, Sebastian. 1992. "The Limits of Legal, Cultural and Religious Pluralism." In *Discrimination: The Limits of Law*, ed. Bob Alexander Hepple and Erika M. Szyszczak. London: Mansell Publishing. Pp. 172-92.
- Poulter, Sebastian. 1994. "Minority Rights." In *Individual Rights and the Law in Britain*, ed. Christopher McCrudden and Gerald Chambers. Oxford: Clarendon Press. Pp. 457-89.
- Poulter, Sebastian. 1995. "Multiculturalism and Human Rights for Muslim Families in English Law." In *God's Law Versus State Law: Construction of an Islamic Identity in Western Europe*, ed. Michael King. London: Grey Seal Books. Pp. 81-7.
- Poulter, Sebastian. 1996. "Les Systèmes Juridiques en Europe et les Populations Musulmanes." In *Familles-Islam Europe. Le Droit Confronté au Changement*, ed. Marie-Claire Foblets. Paris: L'Harmattan. Pp. 47-56.
- Poulter, Sebastian. 1997. "Muslim Headscarves in School: Contrasting Legal Approaches in England and France." *Oxford Journal of Legal Studies* 17 (1): 43-74.
- Poulter, Sebastian. 1998. *Ethnicity, Law and Human Rights*. Oxford: Clarendon Press.
- Rädler, P. 1996. "Religionsfreiheit und Staatliche Neutralität an Französischen Schulen. Zur Neueren Rechtssprechung des Conseil d'Etat." *Zeitschrift für Ausländisches Öffentliches Recht und Völkerrecht (Heidelberg Journal of International Law)* 56 (1/2): 353-88.
- Renan, Ernest. 1882. *Qu'est-ce qu'une Nation?* Conférence Faite en Sorbonne le 11 Mars 1882. Paris: Calmann-Levy.
- Renteln, Alison Dundes. 1990. *International Human Rights. Universalism Versus Relativism*. Newbury Park, London, New Delhi: Sage Publications.
- Renteln, Alison Dundes. 1993. "A Justification of the Cultural Defense as a Partial Excuse." *Southern California Review of Law and Women's Studies* 2: 437- 526.
- Renteln, Alison Dundes. 1994. "Is the Cultural Defense Detrimental to the Health of Children?" *Law and Anthropology* 7: 27-106.
- Rommelspacher, Birgit. 1999. "Die Islamische Provokation." *TAZ*, 8 March.
- Rude-Antoine, Edwige. 1990. *Le Mariage Maghrébin en France*. Paris: Éditions Karthala.
- Rude-Antoine, Edwige. 1991a. "Muslim Maghrebian Marriage in France: A Problem for Legal Pluralism." *International Journal of Law and the Family* 5 (1): 93-103.

- Rude-Antoine, Edwige. 1991b. "La Polygamie et le Droit Français." *Regards Sur l'Actualité* (décembre) 38-49.
- Rude-Antoine, Edwige, ed. 1992. *L'Immigration Face Aux Lois de la République*. Paris: Editions Karthala.
- Rude-Antoine, Edwige. 1995. *Jeunes de l'Immigration. La Fracture Juridique*. Paris: Editions Karthala.
- Rude-Antoine, Edwige. 1997. *Des Vies et des Familles. Les Immigrés, la Loi et la Coutume*. Paris: Editions Odile Jacob.
- Sabourin, Paul. 1993. "Note de Jurisprudence: L'Affaire du Foulard Islamique (C.E., 2 novembre 1992, Kherouaa et autres)." *Revue Du Droit Public et de la Science Politique en France et à l'Étranger* 1 (1): 220-31.
- Safran, William. 1985. "The Mitterand Regime and Its Policies of Ethnocultural Accommodation." *Comparative Politics* 18 (1): 41-63.
- Safran, William. 1990. "The French and Their National Identity: The Quest for an Elusive Substance?" *French Politics and Society* 8 (1): 56-67.
- Safran, William. 1991. "State, Nation, National Identity, and Citizenship: France as a Test Case." *International Political Science Review* 12 (2): 219-38.
- Schain, Martin A. 1993. "Policy-Making and Defining Ethnic Minorities: The Case of Immigration in France." *New Community* 20 (1): 59-77.
- Schnapper, Dominique. 1991. *La France de l'Intégration*. Paris: Gallimard.
- Schulte, Axel, et al. 1985. *Ausländer in der Bundesrepublik. Integration, Marginalisation, Identität*. Frankfurt: Materialis Verlag.
- Schütt, Peter. 1998. "Demokratie Ist für Sie Kein Teufelswerk." *Frankfurter Allgemeine Zeitung*, 17 July.
- Shadid, W. A. R., and P. S. van Koningsveld, eds. 1991. *The Integration of Islam and Hinduism in Western Europe*. Kampen: Kok Pharos.
- Shadid, W. A. R., and P. S. van Koningsveld. 1992. *Islam in Dutch Society: Current Developments and Future Prospects*. Kampen: Kok Pharos.
- Shadid, W. A. R., and P. S. van Koningsveld. 1995. *Religious Freedom and the Position of Islam in Western Europe*. Kampen: Kok Pharos.
- Shadid, W. A. R., and P. S. van Koningsveld. 1996. "Islam in the Netherlands: Constitutional Law and Islamic Organizations." *Journal of Muslim Minority Affairs* 16 (1): 111-28.

- Shayegan, Daryush. 1990. "L'Islam et la Laïcité." *Le Débat* 58 (janvier/février): 42-4.
- Silverman, Maxim. 1992. *Deconstructing the Nation: Immigration, Racism, and Citizenship in Modern France*. London: Routledge.
- Soysal, Yasemin N. 1994. *Limits of Citizenship. Migrants and Postnational Membership in Europe*. Chicago and London: University of Chicago Press.
- Spies, Axel. 1993. "Verschleierte Schülerinnen in Frankreich und Deutschland." *NVwZ* 12 (7): 637-40.
- Taguieff, Pierre-André. 1987. *La Force du Préjugé. Essai sur le Racisme et ses Doubles*. Paris: La Découverte.
- Taguieff, Pierre-André. 1995. "L'Identité Nationale: Un Débat Français." *Regards Sur l'Actualité* 209-210: 13-28.
- Ternisien, Xavier. 2000. "Seize Représentants de l'Islam Ratifient les Principes de M. Chevènement." *Le Monde*, 31 January.
- Ternisien, Xavier, and Henri Tincq. 2000. "Jean-Pierre Chevènement Dessine les Contours d'un Islam à la Française." *Le Monde*, 19 February.
- Thränhardt, Dietrich. 1989. "Patterns of Organization Among Different Ethnic Minorities." *New German Critique* 46: 10-25.
- Tibi, Bassam. 1999. "Der Pass Allein Schafft Keine Identifikation mit dem Gemeinwesen." *Frankfurter Allgemeine Zeitung*, 28 March.
- Tincq, Henri. 1998. "Les Evêques Invitent les Français à Surmonter Leur Peur de l'Islam. Ils Reclament une Totale Égalité Pour les Musulmans." *Le Monde*, 10 November.
- Wayland, Sarah. 1997. "Religious Expression in Public Schools: Kirpans in Canada, Hijab in France." *Ethnic and Racial Studies* 20 (3): 545-61.
- Weil, Patrick. 1995. *La France et Ses Étrangers. L'Aventure d'une Politique de l'Immigration de 1938 à Nos Jours*. Paris: Gallimard.
- White, Jenny B. 1997. "Turks in the New Germany." *American Anthropologist* 99 (4): 754-69.
- Wihtol de Wenden, Catherine. 1991. "Harkis: Le Paradoxe Identitaire." *Regards sur l'Identité*. 175: 33-45.
- Wihtol de Wenden, Catherine, and Ann de Tengui, eds. 1995. *L'Europe et Toutes Ses Migrations*. Paris: Éditions Complexe.
- Young, Crawford, ed. 1993. *The Rising Tide of Cultural Pluralism*. Madison, WI: University of Wisconsin Press.

van Zanten, Agnes. 1997. "Schooling Immigrants in France in the 1990s: Success or Failure of the Republican Model of Integration?" *Anthropology and Education Quarterly* 28 (3): 351-74.

Court Cases

Ministre de l'Éducation Nationale, de la Recherche et de la Technologie c. M. et Mme. Ait Ahmad. *L'Actualité Juridique - Droit Administratif* 20 Février 2000: 165. Conseil d'Etat (Req. n° 181486). Date decided: 20 October 1999. (French Religious Liberty Case - Foulard Case IV)

M.A.B. Hamidou c. Mme. M. Razack. *Revue Critique de Droit International Privé* 87: 644. Cour de Cassation, 1ère Chambre Civile. Date Decided: 7 April 1998. (French-Moroccan Marriage Case)

M. Mohamed A. c. Mme Malika M, épouse A. *Revue Critique de Droit International Privé* 88: 527. Cour de Cassation, 1ère Chambre Civile. Date decided: 24 November 1998. (Islamic Divorce Case)

M. A.M. M. c. Ministère Public. *Revue Critique de Droit International Privé* 88: 281. Cour de Cassation, 1ère Chambre Civil. Date decided: 13 October 1998.

Turkish Dowry Case. *FamRZ* 1998:623 OLG Düsseldorf. Date decided: 3 January 1997.

Moroccan Alimony Case II. *FamRZ* 1997:199. OLG Stuttgart - 17 UF 26/97. Date decided: 26 February 1997.

Kenyan Dowry Case. *FamRZ* 1998:1591. AG Würzburg. Date decided: 24 September 1997.

Iranian Talaq Case II. *FamRZ* 1998:1113. OLG Düsseldorf - 2 UF 78/97. Date decided: 3 November 1997.

German Muslim Talaq Case. *FamRZ* 1998:374. OLG Celle - 22W 107/96. Date decided: 17 January 1997.

Egyptian Divorce Case. *IPRspr* 75:140. AG Mannheim - 1A F 29/96. Date decided: 29 July 1997.

Consorts Abdallah c. M. Y. Abdallah et autres. *Revue Critique de Droit International Privé* 87: 602, Cour de Cassation, 1ère Chambre Civile. Date decided: 25 February 1997. (French-Mayottan Polygamy Case).

Polygamy Case. *NStZ* 1996:436. Staatsanwaltschaft beim LG München I - 235 Js 54017/95. Date decided: 26 April 1996.

Ministre de l'Éducation Nationale, de l'Enseignement Supérieur et de la Recherche c. M. Ali. *L'Actualité Juridique - Droit Administratif* Section: 709, Conseil d'État. Date decided: 20 May 1996. (French Foulard Case VI)

Jordanian Dowry Case. *FamRZ* 1996:1478. OLG Frankfurt/Main. Date decided: 29 February 1996.

Iranian Talaq Case. *IPRspr.* 77:166. OLG Köln - 21 WF 151/95. Date decided: 9 May 1996.

Togolese Marriage Case. *StAZ* 1995:294. LG Nürnberg-Fürth - 13 T 10603/94. Date decided: 18 January 1995.

Moroccan Polygamy Case. *IPRspr.* 90:158-160. SozG Düsseldorf - S 5J 145/94. Date decided: 13 November 1995.

Crucifix Case. *EuGrz* 1995:359-369. BVerfG Karlsruhe - 1 BvR 1087/91. Date decided: 16 May 1995.

Mlle. Aysel Aksirin c. Recteur de l'Académie de Strasbourg. *Revue Du Droit Public et de la Science Politique en France et à l'Étranger* 1995: 1366. Tribunal Administratif de Strasbourg. Date decided: 3 May 1995. (French Foulard Case)

M. et Mme. Aoukili. *L'Actualité Juridique - Droit Administratif* 1995: 332. Conseil d'État (Req. n°159981). Date decided: 10 March 1995. (French Case on the Wearing of Religious Symbols)

Crucifix Case. *EuGRZ* 22:359, BVerfG. Erster Senat - 1 BvR 1087/91. Date decided:

Turkish Wedding Jewelry Case. *FamRZ* 1994:1259. OLG Hamm - 4 UF 109/93. Date decided: 14 April 1994.

Syrian Talaq Case. BayObLG - 3Z BR 66/93. Date decided: 13 January 1994.

Pakistani Marriage in Absentia Case. *NVwZ* 1995:14. VG Wiesbaden - 3/2 E 7282/93. Date decided: 12 September 1994.

Moroccan-German Divorce Case. *IPRax* 1995:174. OLG Hamm. Date decided: 18 August 1994

Moroccan Alimony Case. OLG Hamm - 4 WF 307/94. Date decided: 18 August 1994.

Mme. E.M.-C. c. M.E.M. *Revue Critique de Droit International Privé* 84:105. Cour de Cassation, 1ère Chambre Civile. Date decided: 1 June 1994 (French-Moroccan Repudiation Case II).

Mme. A.M. c. M.A. *Revue Critique de Droit International Privé* 84:104, Cour de Cassation, 1ère Chambre Civile. Date decided: 4 May 1994 (French-Moroccan Repudiation Case I).

Milles Neslinur et Zehranur Yilmaz. *Revue Du Droit Public et de la Science Politique en France et à l'Étranger* 1995:249. Conseil d'État (Req. n° 145656). Date decided: 14 March 1994 (French Foulard Case III).

Gambian Divorce Case. OLG Frankfurt/Main - 3 UF 66/94. Date decided: 16 June 1994.

Turkish Dowry (Mehir) Case. *FamRZ* 1994:899. OLG Köln - 13 U 251/92. Date decided: 21 April 1993.

Nigerian Marriage in Absentia Case. *InfAuslR* 1994:97. VG Koblenz - 3 L 3811/93. Date decided: 25 November 1993.

Moroccan Marriage Case. OLG Düsseldorf - 5 UF 3/89. Date decided: 12 August 1992.

Lebanese Talaq Case. AG Esslingen (Familiengericht) - 1F 162/92. Date decided: 19 March 1992.

Kherouaa et autres. *La Semaine Juridique [JCP]* (21998):61. Conseil d'État (Req. n. 130394), 4e et 1re sous-sect. 1993. Date decided: 2 November 1992. (French Foulard Case I)

Iranian-German Divorce Case. OLG Hamm - 12 WF 41/92. Date decided: 31 January 1992.

Iranian Talaq Case. AG Frankfurt/Main - 35 F 4153/87. Date decided: 9 August 1988.

Pakistani Talaq Case-Appellate Decision. OLG Stuttgart - 1VA 5/86. Date decided: 11 April 1987.

Islamic Dowry Case. *IPRax* 8:109. Bundesgerichtshof - IV b ZR 10/86. Date decided: 28 January 1987.

Pakistani Talaq Case. LJV Baden-Württemberg - 346E-325/85. Date decided: 23 May 1986.

Jordanian Polygamy Case. Veröffentlichungskommission, OVG Nordrhein-Westfalen - 17 A 42/83. Date decided: 7 March 1985.

Iranian German Dowry Case III. OLG Hamburg, 1. Familiensenat - 15 UF 24/81. Date decided: 17 December 1981.

Iranian German Dowry Case II. OLG Köln, 14. Zivilsenat - 14 UF 13/81. Date decided: 29 October 1981.

Iranian German Dowry Case I. AG Hamburg, Family Court - 261 F 84/80. Date decided: 19 December 1980.