

# RUTGERS JOURNAL OF LAW & RELIGION

-NOTE-

*HAS FRANCE TAKEN ASSIMILATION TOO FAR?  
MUSLIM BELIEFS, FRENCH NATIONAL VALUES,  
AND THE JUNE 27, 2008 CONSEIL D'ÉTAT DECISION ON MME M.*

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## I. INTRODUCTION

When people immigrate to a new country, they bring with them a variety of defining characteristics such as different languages, traditions, social norms, and religions that make up their respective identities. Some countries adopt a multiculturalist approach whereby the qualities that immigrants bring are embraced; however, other countries favoring assimilation require integration with the dominant culture in place of individualistic self-identity. Religion is implicated in this process when an immigrant's beliefs are announced to the host country by way of visible markers of belief.

As a country with a strong assimilationist tradition, France has long favored integration with its national culture over any particularized group identities. In particular, France's strong secular policies relegate religion into the private sphere and aim to reserve the public sphere for a singular cultural identity: the French people made up of uniquely French national values. The country-wide ban on religious symbols in public schools in 2004 represents France's most prominent relegation of religion into the private sphere.<sup>2</sup> Currently, France's assimilationist

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<sup>2</sup> *Loi n° 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics* (Law No. 2004-228 of Mar. 15,

policies go beyond determining how students can symbolize their faith in schools; they have also extended into determinations of French citizenship. France requires assimilation as a precondition to obtaining citizenship.<sup>3</sup>

On June 27, 2008, France's highest administrative body, the *Conseil d'État*, took its policy of assimilation a step further than it ever had before.<sup>4</sup> Mme M., a Moroccan immigrant married to a French citizen with whom she has four French-born children, applied for French citizenship. However, Mme M.'s belief in Salafist Islam<sup>5</sup> and her wearing of a *niqab*<sup>6</sup> precluded her attainment of French citizenship. The *Conseil d'État* ruled that Mme M.'s practice of her religion was incompatible with the essential values of the French community.<sup>7</sup> Consequently, it found that she had not fulfilled the condition of assimilation necessary for attainment of French citizenship.<sup>8</sup>

Since this decision, France has continued down this strong path of assimilation. In mid-June 2009, a group of 65 French members of parliament called for a parliamentary commission to examine whether covered Muslim women undermine France's secularism as well as women's rights.<sup>9</sup> A week later, on June 22, 2009, President Nicolas Sarkozy, in a speech addressing parliament at the Palace of Versailles, stated that the *burqa*<sup>10</sup> "will not be welcome on the territory of the French Republic."<sup>11</sup> Then, during a hearing before the parliamentary commission inquiring into veils in France on December 16, 2009, France's immigration minister, Eric Besson, stated that he wanted "the wearing of the full veil to be systematically considered as

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2004 concerning, as an application of the principle of the separation of church and state, the wearing of symbols or garb which show religious affiliation in public primary and secondary schools) (Fr.).

<sup>3</sup> C. CIV. art. 21-4 (Fr.).

<sup>4</sup> No. 286798, Conseil d'État [CE] (Fr. June 27, 2008).

<sup>5</sup> Salafist Islam refers to a "literalist interpretation of the Koran." Katrin Bennhold, *A Veil Closes France's Door to Citizenship*, N.Y. TIMES, July 19, 2008, available at <http://www.nytimes.com/2008/07/19/world/europe/19france.html>.

<sup>6</sup> The *niqab* "covers most of the face, leaving only the eyes uncovered." Clark B. Lombardi & Nathan J. Brown, *Do Constitutions Requiring Adherence to Shari'a Threaten Human Rights? How Egypt's Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law*, 21 AM. U. INT'L L. REV. 379, n.133 (2006). It is usually worn on the Arabian Peninsula. Bennhold, *supra* note 5.

<sup>7</sup> No. 286798, Conseil d'État [CE] (Fr. June 27, 2008).

<sup>8</sup> *Id.*

<sup>9</sup> Nicolas Sarkozy: *Burqa not Welcome in France*, TELEGRAPH, June 22, 2009, available at <http://www.telegraph.co.uk/news/worldnews/europe/france/5603070/Nicolas-Sarkozy-burqa-not-welcome-in-France.html>.

<sup>10</sup> The *burqa* provides more coverage than the *niqab*. The *burqa* is a head-to-toe garment, and while the *niqab* has eye slits, the *burqa* has a mesh covering over the eye area. *See id.*

<sup>11</sup> *Id.*

proof of insufficient integration into French society, creating an obstacle to gaining nationality.”<sup>12</sup> Most recently, on January 26, 2010, a parliamentary commission recommended that the full Islamic veil be outlawed in public buildings, but did not go so far as recommending a full ban on the streets.<sup>13</sup>

This note will explore the appropriate level of imposition a nation should have on the expression of religious belief, particularly when the religious and public realms intersect. Part II will set forth the historical background of France’s assimilationist policies and Muslim immigration into France. Part III will first lay out the statutory framework, then will examine the application of the statute in the *Conseil d’État* decision on Mme M., and finally will analyze the implications of focusing on Muslim women and the headscarf as the centerpieces in this debate in France. Part IV will conclude by proposing that France should work to establish and maintain a finer balance between an individual’s right to religious expression and the country’s need to integrate its citizens into a national identity.

## II. HISTORICAL BACKGROUND

### A. *Secularism in France*

France’s current citizenship statute requiring assimilation is derived in part from the French constitutional principle of *laïcité*. The principle of *laïcité* signifies that “the public sphere should be strictly secular” and the “government and political institutions should be devoid of religious matters and influences,” thus relegating religion completely to the private sphere.<sup>14</sup> This principle largely stems from the French Revolution of 1789<sup>15</sup> and Jacobin Republican

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<sup>12</sup> Elaine Ganley, *Minister says Burqa-style Veils Impede Citizenship*, SEATTLE TIMES, Dec. 16, 2009, available at [http://seattletimes.nwsourc.com/html/nationworld/2010522907\\_apeufrancemuslimveil.html?syndication=rss](http://seattletimes.nwsourc.com/html/nationworld/2010522907_apeufrancemuslimveil.html?syndication=rss).

<sup>13</sup> Eleanor Beardsley, *French Panel: Ban Burqas in Public Buildings*, NPR, Jan. 26, 2010, available at <http://www.npr.org/templates/story/story.php?storyId=122970914>.

<sup>14</sup> Stefanie Walterick, *The Prohibition of Muslim Headscarves from French Public Schools and Controversies Surrounding the Hijab in the Western World*, 20 TEMP. INT’L & COMP. L.J. 251, 252 (Spring 2006); see also Dominique Custos, *Secularism in French Public Schools: Back to War? The French Statute of March 15, 2004*, 54 AM. J. COMP. L. 337, 340-41 (Spring 2006) (“as a cornerstone of the French Republic, *laïcité* is not only a constitutional principle, but also a corpus of republican values which the State ‘propagates’ as a ‘civil religion.’”) (citation omitted).

<sup>15</sup> See Ellen Wiles, *Headscarves, Human Rights and Harmonious Multicultural Society: Implications of the French Ban for Interpretations of Equality*, 41 LAW & SOC’Y REV. 699, 700 (Sept. 2007); Custos, *supra* note 14, at 345.

principles like “political idealism, egalitarianism, and desire to extinguish opposition.”<sup>16</sup> The rationale was that if France “officially ignor[ed] ethnic differences in favor of a transcendent French identity, [then] the country would avoid the stratification of society that existed before the French Revolution.”<sup>17</sup> Because of this historical background, identities based on individualistic characteristics now tend to be “associated with subversion and disloyalty” and further are seen as “destructive to the unitary idea of French citizenship.”<sup>18</sup>

This ideology has translated into how the state interacts with religion. In 1905, total secularism was established by the state.<sup>19</sup> This law signified strict official neutrality in public affairs and represented the principle that the Republic recognizes individuals, rather than groups: “a French citizen owes allegiance to the nation, and has no officially sanctioned ethnic or religious identity.”<sup>20</sup> Thus, the principle of *laïcité* “goes to the heart of French national identity.”<sup>21</sup>

Furthermore, this national ideology has affected the development of France’s immigration and citizenship models. In 1993, President François Mitterand set up a High Commission on Integration.<sup>22</sup> Its first report set out the government’s philosophy on cultural diversity resulting from immigration.<sup>23</sup>

The French conception of integration should obey a logic of equality and not a logic of minorities. The principles of identity and equality which go back to the Revolution and the declaration of the rights of Man impregnate our conception, thus founded on equality of individuals before the law, whatever their origin, race or religion . . . to the exclusion of institutional recognition of minorities.<sup>24</sup>

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<sup>16</sup> Wiles, *supra* note 15, at 704.

<sup>17</sup> Craig Smith, *France Faces a Colonial Legacy: What Makes Someone French?*, N.Y. TIMES, Nov. 11, 2005, available at <http://query.nytimes.com/gst/fullpage.html?res=9C04E2D7123EF932A25752C1A9639C8B63>.

<sup>18</sup> Wiles, *supra* note 15, at 704.

<sup>19</sup> Henri Astier, *The Deep Roots of French Secularism*, BBC, Sept. 1, 2004, available at <http://news.bbc.co.uk/2/hi/europe/3325285.stm>.

<sup>20</sup> *Id.*

<sup>21</sup> Custos, *supra* note 14, at 345.

<sup>22</sup> Wiles, *supra* note 15, at 702.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

Therefore, the official solution to the “immigration problem” in France is a “dual approach which link[s] *control* of those wanting to come in with the *integration* of those already in the country.”<sup>25</sup>

France has developed an immigration policy that has a goal of minimizing socio-cultural difference through the assimilation of immigrants into the dominant French culture. However, when immigrants come into the country with differences that cannot be easily reconciled with the idea of a singular French identity, the policy of assimilation can lead to conflict.

### ***B. Muslim Immigration to France***

While France has had ties to the Muslim world for centuries, Muslim immigration to France is a relatively new development.<sup>26</sup> After World War II, the Muslim population in France increased as immigrants from colonies and ex-colonies began to arrive in France.<sup>27</sup> In conjunction with the process of decolonization, France also had a thriving economy after the war, and in an effort to fill jobs, immigration was again encouraged with immigrants coming primarily from North African countries.<sup>28</sup> Up to this point in time, immigration from North African countries largely came in the form of young men who came as laborers, and did not intend on settling permanently in France.<sup>29</sup> When the economic boom ended in the 1970s, these immigrants found themselves unemployed and pushed out to public housing where they became spatially segregated from the rest of the population.<sup>30</sup> In 1974, France officially suspended labor migration in an effort to ease unemployment and encourage the immigrants to return to their home countries.<sup>31</sup> However, a reverse effect occurred as the immigrants permanently settled in

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<sup>25</sup> MAXIM SILVERMAN, *DECONSTRUCTING THE NATION: IMMIGRATION, RACISM, AND CITIZENSHIP IN MODERN FRANCE* 82-83 (Routledge 1992) (italics in original).

<sup>26</sup> Remy Leveau & Shireen Hunter, *Islam in France*, in *ISLAM, EUROPE'S SECOND LARGEST RELIGION: THE NEW SOCIAL, CULTURAL, AND POLITICAL LANDSCAPE* 1, 4 (Shireen Hunter ed., 2002).

<sup>27</sup> JANE FREEDMAN, *IMMIGRATION AND INSECURITY IN FRANCE* 128 (2004).

<sup>28</sup> Wiles, *supra* note 15, at 701.

<sup>29</sup> Leveau & Hunter, *supra* note 26, at 5.

<sup>30</sup> Wiles, *supra* note 15, at 701; *see also* Leveau & Hunter, *supra* note 26, at 5. The “distribution of the Muslim community [in France] follows a highly skewed and unequal pattern, with a heavy concentration in a few large cities and their suburbs.” *Id.* at 8. Paris and its suburbs account for 38% of the Muslim population in France. *Id.* This spatial concentration has led to a “ghetto phenomenon.” *Id.* This concentration has made “Islam more prominent, and seemingly threatening, in several cities.” *Id.*

<sup>31</sup> FREEDMAN, *supra* note 27, at 128.

France, based on fears that leaving France would lead to inability to return.<sup>32</sup> France subsequently enacted a policy for family reunification as it ended planned migration, thus changing the composition of the Muslim immigrant community.<sup>33</sup> Increasing numbers of Muslim women and children immigrated to France to be reunited with their families, and Muslim symbols of identity like the headscarf became more apparent in France.<sup>34</sup> By the early 1980s, Islam became the second largest religion in France after Roman Catholicism.<sup>35</sup> Now, with an estimated population of five million, France has the largest population of Muslims in Western Europe.<sup>36</sup>

As headscarves worn by Muslim women have become more commonplace, France has struggled with ways to cope with religious symbols that had previously been relegated to the private sphere now appearing conspicuously in the public sphere. This has led to increasing questions about the compatibility of Islamic symbols and values with French cultural identity.<sup>37</sup>

### *C. Prohibition of Religious Symbols in France's Public Schools*

The conflict between the headscarf as a form of religious expression and France's policy on secularism first erupted as a public controversy in 1989 when a French headmaster expelled four pupils from his school for wearing a headscarf.<sup>38</sup> The *Conseil d'État* found that the wearing of religious garb in schools "is not in itself incompatible with the principle of *laïcité*."<sup>39</sup> In addition, it held that students were permitted to wear religious symbols to school as long as those

<sup>32</sup> Leveau & Hunter, *supra* note 26, at 5; see also FREEDMAN, *supra* note 27, at 128.

<sup>33</sup> Leveau & Hunter, *supra* note 26, at 5.

<sup>34</sup> *Id.* at 5-6; see also FREEDMAN, *supra* note 27, at 128-29.

<sup>35</sup> Wiles, *supra* note 15, at 701.

<sup>36</sup> Edward Cody, *Sarkozy Delivers a Mixed Message to France's Muslim Immigrants*, THE WASHINGTON POST, Dec. 9, 2009, available at [http://www.washingtonpost.com/wp-dyn/content/article/2009/12/08/AR2009120802018\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2009/12/08/AR2009120802018_pf.html); FREEDMAN, *supra* note 27, at 129 (It is impossible to arrive at an exact figure because France's census does not include any information on religion).

<sup>37</sup> See FREEDMAN, *supra* note 27, at 10 ("This massive migration created growing difficulties, however, for the French Republican tradition.").

<sup>38</sup> Sonia Dayan-Herzburn, *The Issue of the Islamic Headscarf*, in WOMEN, IMMIGRATION, AND IDENTITIES IN FRANCE 69, 69 (Jane Freedman & Carrie Tarr eds., 2000). Dayan-Herzburn proposes that the headscarf has "plung[ed] French society into disarray because it has appeared in public space: that of the Republican school." *Id.* at 70. The very act of wearing the headscarf in the public sphere was contrary to the roots of French secularism: that religion is solely a matter for the private sphere. *Id.*

<sup>39</sup> Nusrat Choudhury, *From the Stasi Commission to the European Court of Human Rights: L'Affaire du Foulard and the Challenge of Protecting the Rights of Muslim Girls*, 16 COLUM. J. GENDER & L. 199, 226 (2007).

symbols were not so “conspicuous” as to “constitute an act of intimidation, provocation, proselytizing, or propaganda; threaten the dignity and freedom of students or other members of the educational community or disrupt the school’s normal functioning.”<sup>40</sup> Between 1992 and 1999, the *Conseil d’État* found in favor of the students wearing headscarves in forty-one of the forty-nine cases that were heard on this particular issue.<sup>41</sup>

Over a decade later, in 2003, this debate was re-examined when President Jacques Chirac appointed a committee to inquire into the application of *laïcité* in the Republic; this committee became known as the Stasi Commission.<sup>42</sup> The most publicized proposal that came out of this inquiry was its recommendation to ban all clothing and symbols demonstrating religious or political affiliation in public schools.<sup>43</sup> President Chirac adopted this proposal by supporting a ban on all conspicuous religious symbols; this ban was enacted into law on March 15, 2004.<sup>44</sup> The legislation affected *all* religious symbols or clothing regardless of religious affiliation, but it was particularly controversial due to its impact on the rights of young Muslim women to wear the headscarf.<sup>45</sup>

On the one side, proponents of the ban focused on the “ostentatious character” of the headscarf.<sup>46</sup> They asserted that these young women were “bringing Republican values into

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<sup>40</sup> *Id.* at 227; see also Adrien Katherine Wing & Monica Nigh Smith, *Critical Race Feminism Lifts the Veil? Muslim Women, France, and the Headscarf Ban*, 39 U.C. DAVIS L. REV. 743, 756 (March 2006) (stating that the Conseil d’État held that each incident would be decided on a case by case basis); see also Judy Scales Trent, *African Women in France: Immigration, Family, and Work*, 24 BROOK. J. INT’L L. 705, 713 (1999) (discussing how the Conseil d’État found that the principal had violated their freedom of religion as guaranteed by the French Constitution).

<sup>41</sup> Choudhury, *supra* note 39, at 229.

<sup>42</sup> *Id.* at 231.

<sup>43</sup> *Id.* at 233.

<sup>44</sup> *Id.* at 233-234; see also Kristen Walder, *France: Human Rights, Religious Freedoms & a Secular Society?*, 12 BUFF. WOMEN’S L.J. 11, 11 (2004). In February 2004, the French legislature passed an amendment to the French Code of Education that banned students from wearing conspicuous religious symbols in French public primary and secondary schools. *Id.* The amendment states that “In respect for freedom of conscience, and the pure character of the institutions, behaviours and signs expressing a religious or political affiliation are prohibited in schools and colleges.” *Id.* The list of prohibited behaviours and religious signs consist of “open signs, such as large crosses, veils, or kippas.” *Id.* The list does not include “medals, small crosses, stars of David, hands of Fatimah, or a small Koran.” *Id.*

<sup>45</sup> See Leti Volpp, *Why Citizenship?: The Culture of Citizenship*, 8 THEORETICAL INQUIRIES L. 571, 573-74 (July 2007) (stating that despite the neutral appearance of the law, in actuality it masks the particular concern over Muslim girls wearing headscarves and integration of Muslims into the French community); see also Custos, *supra* note 14, at 337 (stating that “the new ban proves to allow indirect discrimination against students whose religions require conspicuous sartorial expression” and “those who are not subject to such a religious precept may comfortably avail themselves of the legality of discreet religious symbols”).

<sup>46</sup> Dayan-Herzburn, *supra* note 38, at 72.

question” and that “the wearing of the headscarf is a sign of submission of women to men.”<sup>47</sup> Others also questioned “how French those who wear the headscarf are and whether they see themselves as Muslims before Frenchwomen.”<sup>48</sup> Overall, the headscarf was seen by proponents as a visible challenge to French cultural homogeneity and the principles of *laïcité*.

On the other side, opponents countered that the headscarf may mark “an attachment to a group, common to both sexes: community, ethnic group, nation, religion, locality, [and] social class.”<sup>49</sup> There may be a variety of reasons that a Muslim woman may choose to wear a veil that go beyond strict religious obedience such as “personal religious conviction, freedom of religion, acceptance as a good Muslim female, compliance with family values, neutralization of sexuality and protection from harassment from Muslim males, and individual choice and religious/cultural identity.”<sup>50</sup> Overall, opponents viewed the ban as ignoring the fact that a headscarf may be worn for a multitude of reasons, and assuming that it is always a symbol of religious observation.

By relegating the headscarf and other religious symbols to private space, France signified that *laïcité* and cultural assimilation outweighed any individual desire to express one’s religious beliefs in public. Most recently, the struggle between the policy of *laïcité* and the place for religion in the secular state has appeared in the context of an application for French citizenship, thereby raising the ultimate question of whether it is possible to be both French and Muslim.

### III. THE JUNE 27, 2008 *CONSEIL D’ÉTAT* DECISION ON MME. M

On June 27, 2008, the *Conseil d’État* affirmed the government’s opposition to the acquisition of citizenship for Mme M., a native of Morocco, who is married to a French national and has four French-born children.<sup>51</sup> This decision reflects the first time that the *Conseil d’État* appears to have created a direct link between an individual’s incapacity to assimilate and the

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<sup>47</sup> *Id.* at 73.

<sup>48</sup> Wing & Smith, *supra* note 40, at 773.

<sup>49</sup> Dayan-Herzburn, *supra* note 38, at 75; *see also* Wing & Smith, *supra* note 40, at 757. Their article discusses the many views held by the women affected by the headscarf ban in the schools: Muslim women. *Id.* They recognize that there are “a wide range of intersecting reasons why Muslim females may want to be able to wear a headscarf.” *Id.* at 758. The article quotes Monique Gadant, author of a work on women and Islam, who states, “Before we come out against the *hijab*, reduced to a symbol of oppression . . . we should take some time to reflect on the motivations of these women [who wear it].” *Id.*

<sup>50</sup> Wing & Smith, *supra* note 40, at 758.

<sup>51</sup> No. 286798, *Conseil d’État* [CE] (Fr. June 27, 2008); *see also* Bennhold, *supra* note 5.

values derived from one's religious beliefs or practices.<sup>52</sup> Until this decision, the only individuals in the Muslim community who were refused French nationality were those judged to be close to the fundamentalist movement and who publicly adhered to the tenets of radical Islam.<sup>53</sup>

The relevant citizenship statutes, the *Conseil d'État* decision on Mme M., and the implications for Muslim women each will be discussed in turn.

### A. FRANCE'S CITIZENSHIP STATUTES

Based on its tradition of secularism in the public sphere, France has adopted a strict principle of assimilation in its citizenship statutes to ensure that those immigrants joining the ranks of the French citizenry will indeed be *French* citizens. The general statute for naturalization by way of marriage is as follows:

An alien or stateless person who marries and whose spouse is of French nationality may, after a period of two years from the marriage, acquire French nationality by way of declaration provided that, at the time of declaration, the community of living both affective and physical has not come to an end and the French spouse has kept his or her nationality. The foreign spouse must also prove a sufficient knowledge of the French language, according to his or her condition . . . .<sup>54</sup>

However, after such a declaration has been made by a spouse, the government can oppose this acquisition of French nationality on grounds of indignity or lack of assimilation. Article 21-4 of the French Civil Code states the following:

By a decree of the Conseil d'État, the Government may, on grounds of indignity or lack of assimilation other than linguistic, oppose the acquisition of French nationality by the foreign spouse within a period of one year after the date of acknowledgement of receipt provided for in Article 26-2, or where the registration was refused, after the day when the judgment which admits the lawfulness of the

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<sup>52</sup> Stéphanie Le Bars, *Une Marocaine en burqa se voit refuser la nationalité française* (A Moroccan in *burqa* has been refused French citizenship), LE MONDE, July 15, 2008, available at [http://www.lemonde.fr/societe/article/2008/07/11/une-marocaine-en-burqa-se-voit-refuser-la-nationalite-francaise\\_1072401\\_3224.html](http://www.lemonde.fr/societe/article/2008/07/11/une-marocaine-en-burqa-se-voit-refuser-la-nationalite-francaise_1072401_3224.html).

<sup>53</sup> *Id.*

<sup>54</sup> C. Civ. art. 21-2 (Fr.).

declaration has entered into force. If there is an opposition by the Government, the party concerned shall be deemed to have never acquired French nationality.<sup>55</sup>

Additional procedures for the government's opposition of a non-citizen's acquisition of citizenship are provided in Decree No. 93-1362 of 30 December 1993.<sup>56</sup> The provisions of this decree that relate to this case are in Articles 14 and 15, which provide the procedures necessary for the acquisition of nationality as a result of marriage.<sup>57</sup> In addition, Article 32 provides that when the government opposes for indignity or failure to assimilate, the minister in charge of naturalizations must provide the reasons in fact and in law that justify the intention to oppose and provide at least 15 days for the affected party to submit a defense brief.<sup>58</sup> Therefore, the Decree mirrors the Civil Code, but also provides additional procedural mechanisms that must be followed when a declaration for citizenship is being opposed. Through the Civil Code and Decree No. 93-1362 of December 30, 1993, assimilation has become a pre-condition for citizenship in France.

In accordance with these procedures, Mme M. made a declaration for the acquisition of French citizenship in May 2004; however, the government decided to oppose her naturalization

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<sup>55</sup> C. Civ. art. 21-4 (Fr.); *see also* Le Bars, *supra* note 52. Before 1973, women married to French citizens became French by marriage while men married to French citizens had to apply for naturalization. *Id.* After 1973, the new citizenship code eliminated the automatic effect that marriage had on citizenship. *Id.* Upon marriage with a French citizen, whether man or woman, a non-citizen could acquire French citizenship by making a declaration for the acquisition of citizenship. *Id.* The new citizenship code further provided for the government to oppose the declaration for either indignity or failure to assimilate. *Id.* Finally, in 2006, the length of time was changed from two to four years of marriage if the couple resides in France and up to five years if the couple does not reside in France. *Id.*

<sup>56</sup> *Décret n° 93-1362 of 30 décembre 1993. Relatif à la manifestation de volonté, aux déclarations de nationalité, aux décisions de naturalization, de réintégration, de perte, de déchéance et de retrait de la nationalité française* (Fr.) (Decree No. 93-1362 of 30 December 1993. Related to the expression of will, declarations of nationality, naturalization decisions, resettlement, loss, revocation, and withdrawal of French nationality).

<sup>57</sup> Decree No. 93-1362 art. 14; Decree No. 93-1362 art. 15. Article 14 states that in order to subscribe to the declaration in Article 21-2 of the Civil Code, the registrant must provide the following documents: 1) a copy of the birth certificate and, where appropriate, that of children born before or after the marriage to the spouse and establishing French descent to the two spouses; 2) a copy of the marriage certificate; 3) a sworn statement signed by both spouses before the authority who is to receive the declaration that the community of life has not stopped between them which is to be accompanied by documents supporting that statement; 4) a certificate of French nationality, the birth certificate, or other documents from the French authorities to prove that the spouse had French nationality at the time of marriage and has retained it; 5) a criminal record; 6) where appropriate, the civil status of foreign children who live with them in the usual way and the documents required to establish evidence. Article 15 provides for the prefect of police to carry out an investigation to verify the continuity of the community of life between the spouses and to assess whether to oppose the acquisition of French nationality for indignity or failure to assimilate.

<sup>58</sup> Decree No. 93-1362 art. 32.

for insufficient assimilation pursuant to Article 21-4.<sup>59</sup> On May 16, 2005, the government put forth a decree of opposition for failure to assimilate.<sup>60</sup> This decree of opposition stated that Mme M.'s practice of a radical form of her religion was deemed to be conduct that is incompatible with the essential values of the French community, in particular the principle of equality of the sexes.<sup>61</sup> Therefore, the decree asserted that Mme M. failed to fulfill the condition of assimilation.<sup>62</sup> The government successfully opposed her acquisition of citizenship and the 2005 decision cited her form of dress, virtual seclusion, and submission to her husband as justification.<sup>63</sup> Mme M. was notified of the decision unofficially by letter on September 5, 2005 and officially on October 12, 2005.<sup>64</sup> Mme M. then appealed to the *Conseil d'État*, the highest administrative court in France, whose decisions are final and cannot be challenged.<sup>65</sup>

As a part of this process, Mme M. underwent interviews with social services and the police, and the information gathered from her was ultimately compiled into a report by the government commissioner, Mme Emmanuelle Prada Bordenave. This report noted that each time Mme M. entered the police station, she was wearing a *niqab*: a long robe with a veil over her hair and face with only her eyes exposed.<sup>66</sup> Mme M. resisted taking off her *niqab* for identification purposes until the police officers insistently requested for her to do so.<sup>67</sup> Immediately afterwards, she put it back on before leaving the building.<sup>68</sup> Mme M. also revealed that when she lived in Morocco, she did not wear the *niqab*; she did not adopt the way of dress until she arrived in France, and her husband requested that she wear it.<sup>69</sup> She said that she wore it more out of habit than out of conviction.<sup>70</sup>

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<sup>59</sup> Conclusions from Mme Prada Bordenave, *Commissaire du Gouvernement* (Government Commissioner), to *Conseil d'État*.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Bruce Crumley, *Too Muslim To Be French?*, TIME, July 12, 2008, available at <http://www.time.com/time/world/article/0,8599,1822189,00.html>.

<sup>64</sup> Bordenave, *supra* note 59.

<sup>65</sup> Crumley, *supra* note 63.

<sup>66</sup> Bordenave, *supra* note 59.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*; see also Bennhold, *supra* note 5. Mme M. "explains that in 2000 she decided to wear the niqab, a dress code typically found on the Arabian Peninsula, because in her eyes her traditional Moroccan attire—a flowing djelaba with head scarf—was not modest enough." *Id.* She stated, "I don't like to draw men's looks" and "I want to belong to my husband and my husband only." *Id.*

<sup>70</sup> Bordenave, *supra* note 58.

In addition, the report pointed to Mme M.'s day-to-day lifestyle as indicative of having the life of a recluse removed from French society.<sup>71</sup> She does not receive visitors at her home.<sup>72</sup> In the morning, she cleans and goes on walks with her children.<sup>73</sup> In the afternoon she goes to her father's house or her father-in-law's house.<sup>74</sup> On occasion she goes grocery shopping alone, but more frequently, she is accompanied by her husband.<sup>75</sup> Finally, the report noted that Mme M. did not know of the principle of *laïcité* or the right to vote in France.<sup>76</sup>

The report pointed to favorable assimilation by stating that Mme M. speaks French well and two of her children are students in the French public school.<sup>77</sup> In addition, during her pregnancies, she was attended by a male gynecologist.<sup>78</sup>

The report concluded by stating that based on the interviews with Mme M., it appears that she does not believe in the values of the Republic, especially the equality of the sexes.<sup>79</sup> She lives in total submission to the men in her family, which is manifested by the clothes she wears and her daily life; therefore, Mme M. does not adhere to the fundamental values of French society.<sup>80</sup> The report ultimately recommended that the *Conseil d'État* refuse Mme M.'s appeal based on her failure to satisfy the conditions of assimilation required by the Civil Code.<sup>81</sup>

### ***B. The Reasoning of the Conseil d'État***

The *Conseil d'État* effectively followed the recommendations set forth in the Conclusions and refused Mme M.'s appeal based on her failure to assimilate. The *Conseil d'État* held that despite Mme M.'s strong French language skills, her adoption of a radical practice of her religion was incompatible with the essential values of the French community, and notably,

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> Bordenave, *supra* note 58.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

with the principle of equality among the sexes; therefore, she did not fill the pre-condition of assimilation pursuant to Article 21-4 of the Civil Code.<sup>82</sup>

The *Conseil d'État* grounded its decision first on the proper procedural steps taken; namely, the May 16, 2005 decree that indicated her failure to assimilate.<sup>83</sup> It cited Article 21-2 and Article 21-4 of the Civil Code in which the government may oppose declarations for the acquisition of citizenship based on indignity or failure to assimilate.<sup>84</sup> When the government has opposed the declaration, the minister in charge of naturalizations must provide the grounds of fact and law that justify the intention to oppose pursuant to Article 32 of Decree No. 93-1362.<sup>85</sup> The *Conseil d'État* then pointed to the communication Mme M. received on March 10, 2005 from the Minister of Employment, Labor, and Social Cohesion that contained the reasons of fact and law that justify the government's intention to oppose her acquisition of citizenship,<sup>86</sup> therefore, the *Conseil d'État* found that the government acted in accordance with the procedural requirements.

Next, it based its decision on the applicable law: the European Convention on Human Rights and Fundamental Liberties,<sup>87</sup> Article 21-2 and 21-4 of the Civil Code,<sup>88</sup> Decree No. 93-1362 of December 30, 1993,<sup>89</sup> and lastly, the administrative justice code. In addition, the *Conseil d'État* applied the law to the factual circumstances as laid out in the report authored by Mme Emmanuelle Prada Bordenave, government commissioner.<sup>90</sup> The *Conseil d'État* determined that because the decree of May 16, 2005 did not have the object or the effect of undermining her religious liberty, it neither undermined the constitutional principle of religious

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<sup>82</sup> *Id.*

<sup>83</sup> No. 286798, Conseil d'État [CE] (Fr. June 27, 2008).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*; see also Decree No. 93-1362 art. 32 .

<sup>86</sup> No. 286798, Conseil d'État [CE] (Fr. June 27, 2008).

<sup>87</sup> See *European Convention on Human Rights and Fundamental Freedoms*, 213 U.N.T.S. 222 (Sept. 3, 1953). Article 9 states that (1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, and to manifest his religion or belief, in worship, teaching, practice and observance; (2) Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

<sup>88</sup> See Code Civil [C. Civ.] art. 21-4. As stated above, Article 21-2 and Article 21-4 of the Civil Code provide for the acquisition of citizenship on grounds of marriage by way of a declaration. *Id.* The government may oppose such a declaration for indignity or failure to assimilate. *Id.*

<sup>89</sup> See Decree No. 93-1362 of 30 December 1993.

<sup>90</sup> No. 286798, Conseil d'État [CE] (Fr. June 27, 2008).

freedom of expression or Article 9 of the European Convention on Human Rights.<sup>91</sup> Moreover, the *Conseil d'État* found that Mme M. may have strong French language skills, but other facts weighed against assimilation.<sup>92</sup> In particular, it pointed to the practice of her religion and its effect on the principle of the equality among the sexes, and concluded that this was incompatible with French values.<sup>93</sup> As a result, the *Conseil d'État* held that she did not meet the conditions for assimilation pursuant to Article 21-4 of the Civil Code.<sup>94</sup>

### *C. Implications of this Decision for Muslim Women*

The *Conseil d'État's* decision to uphold the denial of citizenship to Mme M. exemplifies the current struggle between the policy of *laïcité* and the place for religion in the secular state; in particular, it highlights the key position of Muslim women as the centerpiece in this struggle.

This contemporary debate about Muslim women, Mme M., and her headscarf is reminiscent of colonial discourse that used the beliefs and practices of Muslim women in a particular community as a measuring point of how traditional (Islamic) or modern (Western) the community was. Historically, Arab and Muslim oppression of women has been repeatedly invoked in Western media and in scholarship, and it has served as a central paradigm for perceptions of Arab and Muslim culture.<sup>95</sup> The common paradigm that has been carried over from colonial times is that “the measure of whether Muslim women were liberated or not lay in whether they veiled and whether the particular society had become ‘progressive’ and westernized or insisted on clinging to Arab and Islamic ways.”<sup>96</sup>

Due to the imposition of this paradigm, Muslim women who immigrate to France face unique experiences and challenges as they are generally burdened with choosing whether they

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> LEILA AHMED, *WOMEN AND GENDER IN ISLAM: HISTORICAL ROOTS OF A MODERN DEBATE* 246 (1992).

<sup>96</sup> *Id.* at 247. Leila Ahmed explores the historical roots of the discourse on women and Islam. In particular, she points to how during colonial times, the veil became “the most visible marker of the differentness and inferiority of Islamic societies” and how “it became the open target of colonial attack and the spearhead of the assault on Muslim societies.” *Id.* at 152. For instance, Ahmed points to Lord Cromer, the British consul general in Egypt during colonization, who served as a champion for the unveiling of Egyptian women, was at the same time, in England, the founding member and president of the Men’s League for Opposing Women’s Suffrage. *Id.* at 153. When looking at contemporary debates on women and Islam, it is essential to keep in mind this historical colonialist discourse on women, Islam, and in particular, how the veil plays into this debate. *Id.*

will be the “bearers of tradition” or the “agents of modernity” by both the host country and the Muslim immigrant communities.<sup>97</sup> Immigrant women tend to be represented as the “biological reproducers of the ethnic community, reproducers of the boundaries of ethnic or national groups, key actors in the transmission of the community’s values, markers of ethnic or national distinctiveness and active participants in national struggles.”<sup>98</sup> When the host country aims for assimilation of its immigrants into the national cultural identity, immigrant women tend to be fixated upon for their significance in transmitting community values, and the host country aims to instill those national values that will be passed down to their children and aid in their integration into French society.<sup>99</sup> By placing a Muslim woman in the center of this debate, the *Conseil d’État* risks the continuation of a colonialist framework that defines relations and communications between Islam and the West. In particular, when the determination of whether a Muslim female immigrant is a “bearer of tradition” or an “agent of modernity” rests on her decision to wear a headscarf, it traps women into the center of this historical struggle and ignores the reasons that Muslim women consider in making what is ultimately a personal decision.<sup>100</sup>

The *Conseil d’État*’s discourse in its decision strongly resembles the framework used in colonial discussions of the West and Islam; the immigrant must either decide to join the French national identity or remain identified as an “other.” In this decision, Mme M. becomes the central figure in the struggle between modernity, which is exemplified by the French Western perspective, and tradition, which is represented by Islam. By continuing this framework, France risks perpetuating the tendency to place Muslim women in the center of the struggle and alienating Muslim women who feel they must choose between being accepted by their particularized communities or by the French people. In future decisions, the *Conseil d’État*

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<sup>97</sup> Jane Freedman, *Women and Immigration: Nationality and Citizenship*, in *WOMEN, IMMIGRATION, AND IDENTITIES IN FRANCE* 13, 15 (Jane Freedman & Carrie Tarr, eds., 2000).

<sup>98</sup> *Id.* at 14.

<sup>99</sup> *Id.* at 15.

<sup>100</sup> See AHMED, *supra* note 95, at 247. Ahmed also speaks to the colonial paradigm inserting itself into contemporary debates when she states that “in its contemporary version this essentially still-colonial (or colonial and classist) feminism is only slightly more subtle than the old version. It may be cast, for example, in the form of praising heroic Arab feminist women for resisting the appalling oppressions of Arab culture and Islam.” *Id.* She continues by stating, “whereas this is its stated message, the unstated message when the inherited constructs of Western discourse are reproduced unexamined is often, just as in colonial days, that Arab men, Arab culture, and Islam are incurably backward and that Arab and Islamic societies indeed deserve to be dominated, undermined, or worse.” *Id.*

should refrain from relying on the historical paradigm of Muslim women as the oppressed, and the headscarf as the symbol of that oppression.

Furthermore, the *Conseil d'État* decision is problematic because a policy that equates failure to assimilate with one's beliefs, particularly when concerning Muslim women, may in fact perpetuate the framework of oppression that it purports to contravene. The decision stated that Mme M.'s belief in the inequality of the sexes was a factor in the determination of her failure to assimilate; however, such a decision that refuses to grant her citizenship because of her submission may in fact be perpetuating the alleged submissive lifestyle that she has. Such a policy may be "imposing the heaviest costs of accommodation or assimilation policies on those who are already placed at risk by both their own minority community and the state."<sup>101</sup> In the context of the French ban on headscarves in public schools, one commentator, Ayelet Shachar, states that

the events in France indicate that minority groups are not alone in implicitly conflating images of cultural identity with idealized images of women. The state may also become implicated in similar narratives, although it usually presents them as attempts to "liberate" women from the shackles of an oppressive cultural tradition. Significantly, instead of encouraging the inclusion of French Muslim women in both their religious community *and* their secularist state, the new anti-hijab law makes the attainment of education—the only long term strategy that has consistently been linked to improved life chances and empowerment for girls and women worldwide—more difficult than ever. Rather than facilitating their inclusion in multiple cultural and legal worlds of tradition and secularism, the hijab ban makes movement across cultural barriers much harder, if not virtually impossible.<sup>102</sup>

Restricting Muslim women from French citizenship similarly makes movement across cultural barriers much harder, if not impossible.

The *Conseil d'État* decision placed a Muslim woman and her expression of her religion through her headscarf into the center of the debate between France's national values and Islam. This dichotomous approach is reminiscent of colonial discourse on this topic, and is likely exacerbating the very problem that it seeks to end.

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<sup>101</sup> Ayelet Shachar, *Religion, State, and the Problem of Gender: New Modes of Citizenship and Governance in Diverse Societies*, 50 MCGILL L.J. 49, 54 (2005).

<sup>102</sup> *Id.* at 85.

#### IV. THE AFTERMATH

##### A. *Public Responses after the Decision*

Public response and media coverage of this decision reflect the heated nature of the debate. Most noticeably, several newspaper articles directly linked the denial of citizenship to the fact that Mme M. was veiled (or wearing the *niqab*). It is important to point out that the decision itself expressly linked the failure to assimilate with her values that are incompatible with French national values, not simply the fact that she was wearing a headscarf. However, the media almost uniformly depicted it through the paradigm of Muslim woman in headscarf denied French citizenship. For example, the *Conseil d'État* decision was first reported on July 11, 2008, by *Le Monde* with an article titled *Une Marocaine en Burqa se Voit Refuser la Nationalité Française* (A Moroccan wearing a *burqa* was refused French citizenship).<sup>103</sup> The article opened by asking whether the *burqa* is incompatible with French nationality and continued by stating that this was the first time that a foreigner's level of religious practice has been used to judge the capacity to assimilate.<sup>104</sup>

In addition, after the decision, Fadela Amara, the French minister for urban affairs and a practicing Muslim, called Mme M.'s *niqab* "a prison" and a "straitjacket."<sup>105</sup> She further stated that "[i]t is not a religious insignia but the insignia of a totalitarian political project that promotes inequality between the sexes and is totally lacking in democracy."<sup>106</sup>

The media portrayed Mme M.'s wearing of the headscarf as the main factor leading to the denial of her citizenship, very much resembling the colonial framework regarding issues surrounding Islam and the West. The media's representation of the *Conseil d'État* decision on Mme M. also demonstrates the heightening tensions between the French and the large Muslim population in France. Such tensions could lead to troubling consequences if France does not reconsider its assimilationist policies and provide space in its national identity for a plurality of voices.

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<sup>103</sup> See Bennhold, *supra* note 5; see also Le Bars, *supra* note 51.

<sup>104</sup> Le Bars, *supra* note 52.

<sup>105</sup> Bennhold, *supra* note 5.

<sup>106</sup> *Id.* This article also highlights the responses of other French political figures to the decision. *Id.* "François Hollande, the leader of the opposition Socialist Party, called the ruling 'a good application of the law,' while Jacques Myard, the conservative lawmaker elected in the constituency where Silmi [Mme M.] lives, demanded that face-covering veils be outlawed." *Id.*

***B. Assimilation v. Multiculturalism: Proposal for France's Future***

While this decision reflects France's policy of assimilation, this note proposes that France should turn away from such a strict application of assimilation. Such an approach could have a tendency to perpetuate colonialist paradigms of women, Islam, and the West, alienate the women involved, take away a degree of power that having citizenship would provide, and blur a dangerous line between religious freedom and sacrifice of such a principle in favor of a homogeneous "French people." Rather, France should adopt a policy that retains individual and cultural identity while also working towards creating a common French identity; the latter does not need to be mutually exclusive from the former. The first step that France should take in alleviating its assimilationist policy is to open a dialogue between those with religious or cultural differences and those who have assimilated into "the French people."

Similar to how some scholars have explored the French ban on headscarves and the potential "spirit injury" this ban could have on French Muslim women, judging assimilation based on such a standard could also constitute a "spirit injury" and risk further alienating the French Muslim population in general and Muslim women in particular. "'Spirit Injury' is a CRF [Critical Race Feminism] term that contemplates the psychological, spiritual, and cultural effects of multiple types of assaults upon women."<sup>107</sup> In the context of the French ban on headscarves, Wing and Smith propose that "if France ever wants to alleviate such profound spirit injuries, it needs 'to be respectful of diversity and must find ways of nurturing diversity while fostering a common sense of belonging and a shared identity among its constituent members.'"<sup>108</sup> The same applies to France's requirement of assimilation and the implications of such a policy could even be contrary to France's purpose for the policy. "By ordering people to integrate, you are telling them and everyone else they don't belong, which makes it harder for them to integrate."<sup>109</sup> Instead of creating more societal cohesion, it may in fact further exclude Muslims.

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<sup>107</sup> Wing and Smith, *supra* note 40, at 777 (citations omitted). Wing and Smith look at spirit injury in the context of the French ban on headscarves and state that, "French Muslim women who are not permitted to wear the scarf in school might feel some of the symptoms of spirit injury, including 'defilement, silence, shame, guilt, fear, blaming the victim, violence, self-destructive behaviors, acute despair/emotional death . . .'" *Id.* (citations omitted).

<sup>108</sup> *Id.* at 782 (citations omitted).

<sup>109</sup> *Id.* (citations omitted). Wing and Smith conclude their article by stating that, "from our own ethnocentric perspective, which is based on respect for diversity as opposed to assimilation into a melting pot, we hope that

Perhaps the gravest injury a state can do to its individuals is to predicate the attainment of citizenship and other political rights upon relinquishing one's cultural identity (which is also usually intertwined with religious identity). Many theorists "believe that cultural identity is central to self-identity, to a sense of community belonging."<sup>110</sup> "[P]eople depend on the history, customs, and conventions of their society and culture to find their place in the social world they inhabit."<sup>111</sup> Some theorists even believe that "it is positively harmful for a state to ignore cultural difference, as nonrecognition or misrecognition can be a form of oppression of members of minority cultural groups, imprisoning them in a false, distorted, and reduced mode of being."<sup>112</sup>

In particular, the typical framework being used in clashes between French society and Islam, as represented by the *Mme M.* decision, is "Islam . . . as a threat to the French Republican tradition" and this framework may simply lead to conditions that result in "greater exclusion of Muslims from French society."<sup>113</sup> "[P]ersistence of such racism and discrimination creates insecurities for populations of immigrant origin in France. Perceived failures of anti-racism in France can be attributed in part to an institutionalization of racism through the continuing dependence on Republican models of citizenship and rights."<sup>114</sup> In order to avoid further alienation, France may wish to integrate an understanding of multiculturalism into its policies, which "recognises a positive value in diversity, a meaningful acceptance of other cultures and respect for their values, traditions and deep moral differences."<sup>115</sup>

The debate here is strongly intertwined with the idea of a national French identity. Historically, the idea of a national identity was linked to issues of security and public order, specifically in relation to North African immigrants.<sup>116</sup> This is particularly represented by the call in 1986 to change the Code of Nationality to eliminate the automatic right to citizenship for

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France will someday see the value of inclusion of the multiplicity of voices of all its people, whether they are of the majority religion/culture or not." *Id.* at 785.

<sup>110</sup> Wiles, *supra* note 15, at 731 (citations omitted).

<sup>111</sup> *Id.* (citations omitted).

<sup>112</sup> *Id.* at 731, 732 ("To deliberately suppress aspects of minorities' cultural identity through restrictive laws is likely to . . . exacerbate social tensions.")

<sup>113</sup> Freedman, *supra* note 27, at 4-5.

<sup>114</sup> *Id.*

<sup>115</sup> Dominic McGoldrick, *Multiculturalism and Its Discontents*, 5 HUM. RTS. L. REV. 27, 31 (2005).

<sup>116</sup> Silverman, *supra* note 25, at 142.

children born in France of foreign parents.<sup>117</sup> Largely, this suggested measure “aimed to delegitimize . . . [children] of North African parents.”<sup>118</sup> It attempted to instill in the Nationality Code a more “‘Europeanised’ framework for considerations of French national identity.”<sup>119</sup> While the measure did not go through, it does represent the somewhat contentious relationship between France, immigrants from post-colonialist countries who are largely Muslim, and the national identity. France has, for the most part, tied citizenship up with nationality. However, “citizenship preceded nationality; only later did citizenship become nationalized.”<sup>120</sup>

While states clearly have an incentive for all of their citizens to take part in a common set of values, beliefs, and practices, a state’s insistence on assimilation might actually threaten the very value of unity that the policy of assimilation is denied to promote. In a world that is quickly dividing upon geographical and religious lines and where threats of terrorism are rampant, it will likely foster more alienation and resentment if certain religious groups are outright excluded from political participation based on belief systems and manifestations of those belief systems. Some opponents of a more multiculturalist approach fear the dissemination of radical ideologies and violence in a national culture that is more accepting of differences.<sup>121</sup> However, little evidence exists that radical ideologies are “directly connected to multicultural accommodation policies designed to enable individuals to stand forward with their differences acknowledged and respected.”<sup>122</sup> To the contrary, the presence of “intercommunal hatred, fear, and bloodshed seem to flourish under precisely the opposite conditions: where patterns of systemic deprivation, discrimination, and retaliation are directed at those deemed to be ‘too different.’”<sup>123</sup>

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 143. “In the new ‘mixed’ context of post-colonialism it is precisely the prospect of non-differentiation and equality which is of deep worry: that is, the problem of accepting as equals those who were previously inferiors, the problem of accepting as part of the universal those who were previously defined according to their religion, the problem of accepting as citizens those who were previously subjects.” *Id.* at 144-45 (emphasis in original).

<sup>120</sup> *Id.* at 152 (citation omitted); see also *The Functionality of Citizenship*, 110 HARV. L. REV. 1814, 1818 (1997) (pointing to the example of the European Union, “a supranational organization that grants the political and legal rights of functional citizens to the nationals of all member states but does not purport to install a single overriding national identity”)(citations omitted). The Treaty of Maastricht provides that “[e]very person holding the nationality of a Member State shall be a citizen of the Union.” *Id.* (citation omitted).

<sup>121</sup> See Shachar, *supra* note 101, at 78 (explaining that the threat of multiculturalism for many secularist liberals lies in the potential to “valorize communities at the expense of their members, silence dissent, restrict individual autonomy and freedom, inflame ethnic and religious zealotry, and destabilize a social peace that is already fragile in many parts of the world.”).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

Rather than adopting a strict approach of assimilation with one static national identity, France must open a dialogue with the resident population and determine a way to incorporate some fluidity into their national identity. Many commentators stress the importance of dialogue:

[W]e should recognise the value of keeping the conversation about who ‘we’ are open and negotiable. This in turn requires that we should recognise all the participants in this dialogue as possessing equal value, both those of us who have been here for many generations, and those of us newly arrived.<sup>124</sup> [Opening up such a dialogue] . . . places responsibility on those that are ‘in’ to recognise that they have no special privilege to [Frenchness] based merely on longevity, but it also requires those who arrive into the conversation to identify, to an extent, with the narratives that have emerged out of a history that cannot be wished away.<sup>125</sup>

France must resist the urge to exclude in times of unrest and turmoil. Such exclusion on the basis of one’s religious beliefs can constitute a form of “spirit injury” which may in fact breed more of the radical beliefs that France is trying to protect against. Instead of adhering to a policy of assimilation (and exclusion), France should use a standard for assimilation that includes individuals with diverse backgrounds, viewpoints, and religions; France should redefine “French national values” and make space in the French national identity for these diverse individuals. The first step that France can take in this process is to open up a dialogue about how to redefine what it means to be French. Ultimately, the approach of assimilation and even *laïcité* must adapt to the nature of the world today; it is increasingly vital to make space in a collective identity for other voices.

## V. CONCLUSION

France strives to maintain a population of citizens that identify themselves as part of a collective French identity and also fit into what France considers its French identity to be. Such a national ambition, while intending to unite, may actually in practice divide the French population into those who are deemed to “belong” and those who are classified as the “other.” As this assimilationist policy becomes reflected in France’s decisions on citizenship, France may risk alienating those who wish to participate as citizens and may in fact be productive, worthy citizens, but will likely be denied citizenship if they also wish to retain their autonomous self-

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<sup>124</sup> McGoldrick, *supra* note 115, at 44-45.

<sup>125</sup> *Id.* at 45 (citation omitted).

identities. In the religious sphere, particular problems will continue to arise when religions that are characterized by outward manifestations encounter the policy of *laïcité*, which requires the relegation of religious beliefs into the private realm. Islam, a religion characterized by conspicuous public manifestations of belief, is inevitably affected by this policy more than those religions that easily fit into a framework of private expression.

The *Conseil d'État* decision on Mme M. reflects the inherent problems with a policy, in the name of secularism and unity, which ends up discriminately affecting certain religions more than others based on each religion's varied beliefs and practices. The *Conseil d'État* found Mme M. to have not sufficiently assimilated because her beliefs were deemed incompatible with French national values, yet the *Conseil d'État* does not specifically identify the standard it is using for assimilation, which of Mme M.'s beliefs or manifestations of belief are problematic, or how it is defining French national values. This decision appears to go a step further than the policy of *laïcité* would warrant; not only does it reflect a lack of assimilation for Mme M. to outwardly manifest her beliefs, but it is problematic that she carried certain beliefs, even if only in the private sphere. The *Conseil d'État* determined that these beliefs were problematic because they were incompatible with French national values, but this seems to fall into the same trap. If incompatibility with French national values is the standard for assimilation, then persons holding religious belief that intrinsically differ from what France considers its national values to be will be refused citizenship more than people whose religious beliefs align with French national values.

France ought to reconsider its strict assimilationist approach and instead, adopt an approach that defines the collective French identity and national values with some fluidity: a collective national identity that also encompasses individual identities with respective backgrounds, values, and beliefs. While France may consider this approach to be too threatening to its national identity, further alienation of members of its population will prove to be the greater threat to its national identity. France is already facing troubling consequences by aligning "citizen" with a strict version of "the French person." France must adopt a more favorable approach that is not predicated on the eradication of one's prior cultural and religious identity in order to attain French citizenship.