

BOOK REVIEWS

Behind the Veil: A Critical Analysis of European Veiling Laws. By Neville Cox. Northampton: Edward Elgar, 2019. Pp. 288. \$135.00 (cloth); \$40.00 (digital). ISBN: 9781788970846.

As the title of his book—*Behind the Veil: A Critical Analysis of European Veiling Laws*—suggests, Neville Cox, professor in law at Trinity College Dublin, analyzes the reasons that Islamic veiling in Europe has become a symbol of the political struggle to limit the visibility of Islam in the public square, with the veil being considered a threat to Western secular values. Indeed, one does not need to look beyond the cover page of a national newspaper or debates on television to realize the crucial and contested role that religion currently plays in public debate. This is especially true with respect to the place of Islam in Europe, the ongoing obsession over the wearing of the veil by Muslim women, and the growing trend toward constraining religion—especially Islam—to the private sphere. As Cox highlights, “a number of these laws were enacted in the immediate context of imminent political elections, in which a right-wing political grouping appeared to be attracting significant support” (6). As a result, calls to legislate the wearing of veils have been made on the grounds of an urgent need to strengthen national identity and European values against Islam, which is still perceived as a religion that cannot be fully integrated into European society.

In France for instance, legal restrictions on religious symbols or garments worn by Muslim women have been on political agendas since the 1990s, and restrictions have increased ever since. The trend of restriction was accelerated with the ban of the concealment of the face in public, also known as the “burqa ban,” that rapidly spread throughout many countries in Europe beginning in the 2000s. Even more concerning was the abrupt rise in 2010 of a near unanimous political and societal consensus around the need for a ban. Unfortunately, not only was robust debate on the measures lacking, but the conversations that did occur lacked any firsthand knowledge about the practice of the wearing of the headscarf—let alone about the views and experiences of the women who wore it. Cox enters this milieu with a thorough analysis of history, policies, legislation, and jurisprudence that decrypts the rationale behind the justifications of banning veils and similar policies across Europe.

Cox deconstructs step by step the postulate according to which a woman’s choice to wear a veil is grounded in political or identitarian motives or seen as evidence of radicalization. The author engages in a threefold analysis of this postulate in European politics. First, he analyzes “the merits of the arguments from both national governments and in popular rhetoric” on the reasons why this type of garment should be prohibited (1). Second, he highlights the disconnects between what he designates as “the real motivations” behind the adoption of this type of legislation and the reasons given by legislators (1). Finally, he examines whether these laws “represent legitimate interferences with the rights of those women,” who, for diverse motives mostly connected to religious obligations, choose to wear this type of garment (1).

Notwithstanding the questionable premises that grounded the legislation restricting the wearing of the hijāb or the niqāb, Cox does not interpret this trend as a symptom of the erosion of human rights. Instead, he reveals the urgent need to implement a corrective that would reveal the disproportionate and unfair consequences of these bans so that the legislation can effectively help and support women who have experienced abuse and who have seen their rights constantly diminished and weakened. Cox’s analysis advocates for a revitalization of the original objective and goal of

human rights as well as a call to reinforce multiculturalism as a means of fighting the growth of populism and far-right parties across Europe.

The book is organized into eight chapters, with each responding to the main legal arguments used to justify laws banning the veil. Chapters 1 to 3 are introductory chapters that establish the contextual bases and provide solid elements of definition. A peculiarity worth noting: unlike many legal studies of the wearing of the veil by Muslim women, Cox does not treat Muslim women devotees as a monolith. Further, he provides significant insight into the reasons why a woman decides to wear a veil. In doing so, Cox draws on religious sources, the history of Islam, and the impact of culture and the political environment (18–50). For instance, in the section “God, Morality and the Islamic Veil” (18–35), Cox meticulously demonstrates how the Qur’an, the sunnah, and shari’a operate as religious, legal, and cultural factors that justify the wearing of the veil. Cox also emphasizes the importance of interpretation of religious texts, the necessity of understanding the different schools of thought, and the need to understand Muslim women’s perspectives: “[T]his is not an effort to paint the Islamic veil as something that is *inherently* empowering or a source of happiness. It *can* be used as a tool of subjection or a badge of oppression. It is simply to say that there *is* evidence, from women who choose to veil, that the act of doing so has, for them, been a rewarding one” (48).

In chapters 4–7, Cox retraces the arguments justifying the different laws limiting the wearing of the veil. Among them are those based on counterterrorism and national security considerations (chapter 4); arguments related to women’s rights and gender equality (chapter 5); those related to societal values and in particular the different definitions and interpretations of secularism, as well as the controversial notion of living together (chapter 6); and finally arguments based on a “right not to be intimidated” (228)—the idea that the veil could be prohibited because its alleged connection with terrorism could be a source of intimidation for other members of society.

For Cox, because they are based on unproven assertions, none of these arguments are valid. He wisely comments that “there is very little evidence to back up the proposition that there *is* this inherent connection between Islam and violence” (100). The example of the prohibition of the concealment of the face across Europe is a remarkable example that illustrates this assessment. These bans were preceded by an unproven hypothesis regarding women who chose to wear a full-face covering. For instance, at the time the ban in France was adopted in 2010, there was no empirical research available that documented experiences of women who wore face veils, nor was there any effort to reach out to those women for consultation. Cox also argues that the national security grounds that were used to justify such bans were done in a way that targets all face coverings in order to avoid a constitutional challenge (104). Indeed, in 2008 a French parliamentary commission gathered to tackle the issue of the full-face covering, following the release of statistics in a confidential report from the Ministry of the Interior that estimated around two thousand women wear the niqāb. In April 2010, a national debate on the place of Islam in France, and more specifically the wearing of the burqa (in reality the niqāb), was initiated. The debate was sparked by media coverage of the first case of police imposing a fine on a niqāb-wearing woman for posing a danger to public safety. Even though the phenomenon is marginal in France and the potential threat to public order is negligible, the commission released a report in January 2010 stating that the issue constituted an emergency. A parliamentary resolution was subsequently adopted, highlighting the urgency to respect France’s republican values allegedly put in jeopardy by the development of these practices. In 2010, upon request of the government, the Council of State (France’s highest administrative court) released a nonbinding report that strongly criticized the adoption of such a ban. While the Council of State held that a legislative ban on niqāb was possible in a few specific cases (for example, to protect public safety, to fight against fraud), it remained opposed to a total

ban. Yet the government ultimately did not follow the Council's advice and submitted the Bill Prohibiting Concealment of the Face in Public Space to the parliament, which adopted it by an overwhelming majority. The bill was referred to the Constitutional Council for review, and that council upheld the ban finding no violation of fundamental freedoms. The law was challenged before the European Court of Human Rights (ECtHR), and in its July 1, 2014, judgment in *S.A. S v. France*, 2014-III, Eur. Ct. H. R. 314, the Grand Chamber of the ECtHR upheld the ban. For Cox, "if the [ECtHR] begins its judgments with a mantra-like endorsement" (69) of religious freedom, such declarations are "entirely rhetorical in nature" and the protection offered by the Court is "extremely weak" (69). *S.A.S v. France* is an excellent illustration of this statement. Indeed, the ECtHR missed a strong opportunity to defend religious freedom, and its stance is due to multiple considerations, among them, national security, public order, women's rights, and the defense of secularism and *laïcité*. This approach by the ECtHR is further illustrated by its judgments in *Leyla Şahin v. Turkey*, 2005-XI Eur. Ct. H.R. 173, and *Lautsi and others v. Italy*, 2011-III Eur. Ct. H. R. 61.

As for the argument that anti-veiling laws protect women's rights and women's empowerment, available empirical research shows that the central assumptions used to justify these bans are inaccurate. While the research does not allow a conclusion as to whether or not women are being forced to wear a face veil, it does clearly show that for a significant number of women who wear a face veil, it is the result of a personal, autonomous choice (152). Cox argues that the implementation of such laws paradoxically generates inequality because, while they focus "exclusively on one basis for self-identity (gender) as the measure for equality," they completely ignore the "reality that many Muslims, of any gender, will primarily define themselves on another basis (religion)—and to the extent that the law disproportionately affects Muslims when compared to non-Muslims" (156).

Finally, according to Cox, there are too many inconsistencies and discrepancies between the goals that this type of law aims to pursue (such as national security, gender equality, living together) and the measures adopted (the banning of the veil in almost all circumstances in the public square) that would make the laws disproportionate and discriminatory as they mainly affect and target Muslim women.

Cox explains that the ECtHR nevertheless upheld the ban and did not find any violations of the European Convention of Human Rights because inconsistencies exist in the Court's case law on religious freedom (69–70). One example is prohibition of the face veil in France and Belgium. The applicants went before the ECtHR on the grounds that these laws violated Article 14 of the Convention on the prohibition of discrimination. *Prima facie*, the situation of Muslim women who wish to wear the full veil seems to indicate indirect discrimination as defined by Directive 97/80/EC of the Council of Europe and by the jurisprudence of the ECtHR (*D.H. and others v. The Czech Republic*, 2007-IV Eur. Ct. H. R. 339). Both in France and Belgium, the laws of 2010 and 2011 that were challenged before the ECtHR are generic prohibition laws—not specific to the niqāb or the burqa—that, in theory, include any type of garment that covers one's face. However, in both countries there is very little doubt that the law and the sanctions were aimed exclusively at Muslim women who wish to conceal their faces, as proven by studies such as that of the At Home in Europe Project of the Open Society Foundations in 2011.¹

In those cases, the ECtHR chose to stress that the concept of indirect discrimination cannot be applied as long as the measure or policy in question has an "objective and reasonable" justification

1 At Home in Europe Project, *Unveiling the Truth: Why 32 Muslim Women Wear the Full-Face Veil in France* (New York: Open Society Foundations, 2011), <https://www.opensocietyfoundations.org/publications/unveiling-truth-why-32-muslim-women-wear-full-face-veil-france>.

(*S.A.S v. France*, § 161). Thus, since it pursues a “legitimate aim” and there is a “reasonable relationship of proportionality” between the means employed and the aim pursued, the plea alleging violation of Article 14 cannot apply. Such reasoning naturally led the ECtHR in two judgments —*Dakir v. Belgium*, App. No. 4619/12, [2017] Eur. Ct. H. R., <http://hudoc.echr.coe.int/eng/?i=001-175660>; and *S.A.S. v. France*—to declare the laws prohibiting the full veil in conformity with the Convention, deeming the prohibition of the full-face covering objective, reasonable, and justified by reference to the argument of “living together” (a notion deemed “far-fetched and vague” in the dissenting opinion of judges Nussberger and Jäderblom (*S.A.S v. France*, § 5)).

Cox points out the necessity of making a distinction between religious freedom and free expression, arguing that the “‘freedom of expression’ aspects of a woman’s action in wearing an Islamic veil is more than a mere exercise in semantics” (57). He thus strongly recommends considering other rights at stake in outlawing the veil, like privacy rights (Article 8 of the Convention) and freedom of expression (Article 10). In order to do that, Cox suggests a full examination of an applicant’s claim under each article of the Convention so that Courts listen to the applicant’s submissions fully and carefully consider a woman’s story, what the veil means to her, and why she chooses to wear it (73). Such a process would allow the Court to avoid emptying the meaning of the veil and imposing a unilateral view without listening to the people most affected by the ban. It would also allow the Court to give judgments that effectively protect vulnerable minorities. Cox concludes by warning that the “real reasons” behind outlawing the veil are “manifestly not consistent with international human rights law” (260). This warning raises serious questions about the future of international human rights law and how this kind of narrative reinforces nationalism and populism that could put in danger the foundations of democracy.

Behind the Veil is a bold and ambitious volume. Cox adopts a pedagogic and pragmatic approach and always provides tools and explanations to the reader to follow his reasoning. Highly accessible and written in an easy, up-to-date style, Cox’s book provides both an in-depth review of case law and policies and a sorely needed and thought-provoking examination of issues regarding the place of Islam in Europe and the devastating consequences that outlawing the veil might have in our societies. Few tasks are more critical than rethinking the way we analyze these very sensitive issues in a context where religious minorities in Europe become increasingly vulnerable and where their right to express their identities is challenged every day.

Rim-Sarah Alouane

PhD Candidate in Comparative Law, University Toulouse Capitole