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Headscarves: A Comparison of Public Thought and Public Policy in Germany and the Netherlands

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ABSTRACT *This article focuses on public debates and public policy on the Islamic headscarf in the Netherlands and Germany. In the Netherlands the Islamic headscarf meets with an accommodating policy reaction, while in Germany some eight federal states have introduced legislation to ban the headscarf. This difference is explained, so I argue, by national differences in citizenship traditions. While the Netherlands represents a multicultural model, Germany used to be the paradigmatic example of an ethno-cultural model of citizenship. Yet, the reaction of the German left to the headscarf, while often non-accommodating, is very differently inspired by German history than that of the right. A commonality is that in both countries the issue is framed as a conflict between public neutrality and religious freedom, not gender equality. An effect of the focus in the debate on neutrality is that it obscures the agency of Islamic women and the gender dynamics in Islamic communities.*

KEY WORDS: Islam, headscarf, citizenship, gender, national identity, Germany, the Netherlands

Introduction

The Islamic headscarf has been a subject of public concern and public debate in many European countries. What makes the headscarf so controversial? Demands to wear an Islamic headscarf in public institutions typically raise questions about neutrality. In order to secure for all citizens an equal right to form and express their personal beliefs, the state should not identify with any particular ideology. Neutrality is hence a precondition for religious and cultural diversity. The wearing of headscarves in public institutions, and in particular religious headgear worn by public officers, may endanger this neutrality. The question then becomes what should come first: public neutrality or the right to religious freedom of the woman concerned? A second series of questions concerns gender equality. The headscarf is considered by

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some as a sign of women's subordination within Islam and hence as contravening the principle of gender equality that public institutions are supposed to subscribe. Yet, does this warrant a ban on headscarves? A third theme concerns the headscarf as an (ostentatious) sign of an Islam that is manifesting itself politically. Inspired by geopolitical and national developments, the wearing of a headscarf is for many young Muslim women not merely a religious act, but an act of cultural defiance and increasing politicisation. The religious community may also pressure individual female members to wear headscarves. A ban on headscarves in the classroom is thus occasionally justified as a measure to protect young women from liberal Islamic homes against the pressures of their more stringent fellow believers. Yet restricting the right to wear a headscarf for the sake of the freedom of some inevitably restricts the freedom of others. In short, the Islamic headscarf poses fundamental questions about the values and principles on which the liberal democratic state is built.

In this paper I want to discuss public debate and public policy on demands by Islamic women to wear the headscarf in two countries, the Netherlands and Germany. The question I shall address is twofold.

- What has been the political debate and policy on demands to wear Islamic headscarves in public institutions in the Netherlands and Germany?
- Can this be understood in terms of national traditions of citizenship?

As my questions already indicate, I do not want to discuss what citizenship of Islamic women ideally should entail, but rather see what policy practices have evolved in the two countries. This is because I think, with Joseph Carens (2000: 7), that there is a range within which liberal states are morally free to institutionalise liberal ideas and that an excursion into the practice of liberal democracy may help clarify the meaning of these ideas. I choose to compare Germany and the Netherlands, because in the sociology of immigration and citizenship Germany, until the reform of its nationality law in 2000, was considered as the paradigmatic case of an ethno-cultural model of citizenship, while the Netherlands is considered as representing a multicultural model. My thesis is that they will differ in their decision-making on the Islamic headscarf and that this difference reflects the two countries' citizenship models.

Of course national states do not operate in a vacuum. The principles they are supposed to abide by in their policymaking are laid down in national legislation, but they are also bound by international treaties. Gender equality and non-discrimination of women are protected both by European legislation (see Liebert, this issue) and by UN human-rights conventions like CEDAW (see Skjeie, this issue). One would also expect, with the imminent accession of Turkey to the European Union, that national debates on citizenship and diversity will take place in the context of a European Union reflecting on the role of Christianity in a future European identity.

This paper is about the meaning political ideas take on in practice. It tries to combine two traditions that hitherto have largely gone their separate ways: the political philosophy of multiculturalism and the sociology of immigration and citizenship.

In what follows I shall first outline the two theoretical perspectives that inform the paper and then go on to sketch the public debate and public policy concerning the headscarf in the two countries. My conclusions are necessarily tentative, because my gathering of data is far from systematic and this paper in no way pretends to offer a full comparison. My aim is more modest: to see whether it makes sense to combine the two perspectives and see whether the national traditions of citizenship that are assumed by political sociologists are found in the public decision-making on the Islamic headscarf in the two countries.

Political Philosophy: The Contextual Turn

Liberal political philosophy, as a normative theory, aspires to define the parameters of a just political order or, more modestly, to act as a social critic or to bring us to a better understanding of the values and ideals we claim to cherish (cf. Kukathas 2004). Whichever of these ambitions drives the philosopher, each of them requires that one keeps one's distance from the actual world. One cannot envisage a better world or be critical of this one, if one is fully immersed in it. That is at least what philosophers believe, and therefore the focus of moral reasoning is on abstract ideas rather than on particularities. We also see this preference for the abstract, apart from the particular context, in moral judgement of concrete cases. Because it is unmistakably true that in past years political philosophy has engaged more with concrete issues of public policy and particularly so on multicultural matters (e.g. Benhabib 2002; Carens 2000; Kymlicka 2001; Parekh 2000). It might not be overstated to call this the contextual turn in political philosophy. Yet, even if philosophers engage with concrete cases, their preference is, as Anne Phillips phrased it 'to separate out the issues that need to be addressed in determining what justice requires from those to be addressed in determining which policy mechanisms will best achieve this' (Phillips 2005: 274). Most philosophers are realistic enough to acknowledge that public policy is the outcome of numerous kinds of considerations, among them pragmatic concerns about contextual features of the case (e.g. political feasibility in terms of political power relations). Yet these are not susceptible to philosophical analysis. We should not mix up things: 'cases illustrate principles, exemplify dilemmas, motivate people to right actions, and the like; but cases are otherwise irrelevant to moral judgement' (Beauchamp & Childress 1994: 94).

Hence, the philosopher's 'natural' inclination is to abstract from context. Why then a contextual turn? This 'contextual turn' is inspired among other things by the insight that if we seek to address real, existing problems, contexts cannot be argued away. Contextual arguments may interpenetrate with principled arguments. Contextualists still debate what theoretical consequences this should have. It is generally accepted, however, that liberal principles are generic and that therefore there is a range within which they can be interpreted (this is worked out in particular by Carens 2000). From this it follows that there may exist different understandings of core liberal concepts among different national states. It is therefore,

from the perspective of moral theory, interesting to look at how different liberal states have understood the liberal tradition.

Political Sociology: Citizenship Models

Comparing European national cases is what the political sociology of immigration and citizenship does (e.g. Joppke 1999; Koopmans *et al.* 2005; Soysal 1994). An important impetus to this kind of research was the study by Rogers Brubaker (1992) on citizenship and nationhood in France and Germany. The thrust of his argument is that concomitant with these countries' state-formation process there evolved in France and Germany nation-specific understandings of nationhood and citizenship. While the development of these understandings of nationhood and citizenship was a rather contingent process, once established they showed themselves to be relatively stable models that informed these countries' immigration and integration policies. Although Brubaker is criticised for overestimating the stability of his models (see Favell 1998; Joppke 1999), and there is much debate about whether the nation state still is the relevant context for understanding migration and ethnic relations (see Sassen 1998; Soysal 1994), the idea of nation-bound citizenship models has proven a very useful analytical tool in comparative work on immigration and integration policies.

Inspired by political sociology I would like to distinguish three ideal-typical models of citizenship, a civic-assimilationist, an ethno-cultural and a multicultural model. These models differ in how they perceive the unity of the nation. In the civic-assimilationist model the nation is thought as an undivided community of citizens that share common political principles. In order to secure common citizenship, citizens are asked to abstract from their particularistic identities and exist in the public sphere as citizens only. Anyone who is willing to subscribe to the nation's principles can in theory become a citizen. This model is therefore open to accept immigrants as citizens. Citizens are allowed to have particularistic identities, e.g. a religious identity, but these are considered as belonging to the private sphere and as such not relevant for their actions as citizens. France is considered as the proto-typical example of the civic-assimilationist model, because while it is relatively easy to acquire citizenship, citizens are expected to assimilate in one uniform nation that can be understood as a political community transcending the differences of its members (see Brubaker 1992). An ethno-cultural model conceives of the nation as a culturally homogeneous community. Because of its cultural monism, it has difficulty both in accepting cultural aliens as citizens and in allowing other than the dominant majority's religion in public life. Germany figures in the literature as the prototypical ethno-cultural model (e.g. Benhabib, 2002; Brubaker, 1992). In a multicultural model, lastly, cultural and religious diversity is not only allowed in public life, public life is often organized along the lines of religious or secular worldviews. The nation is united by a thin core of common values, which goes together with the co-existence of groups that have their distinctive group identities. A multicultural model is open to accept

immigrants as citizens and grants religious identities much visibility in public life. The Netherlands is generally believed to represent a multicultural model (e.g. Benhabib, 2002, Koopmans et al. 2005).

This analytical distinction into citizenship models is often combined with a political-opportunities structure approach. This approach focuses on the interests of the relevant political actors, their power relations, and characteristics of the institutional political structure that offers certain opportunities and constraints. Political action and its outcome, the policy solutions that are eventually adopted, are considered as shaped by the opportunities and constraints offered by the political environment (see for instance Joppke 1999).

In political philosophy multiculturalism is being discussed in normative terms, but the debate is rather disconnected from the actual political practices of liberal states. In the sociology of citizenship and immigration we find systematic European comparison of national political cultures and practices. Yet because this tradition typically seeks to explain political conflict in terms of political opportunities and interest-driven actors, it tends to ignore the normative dimension of the conflict. While not often combined (but see Favell 1998 or Modood *et al.* 2006), it seems worthwhile to integrate these traditions.

The Netherlands: A Multicultural Model

The immigration and integration policy of the Netherlands is thought to represent a multicultural model (see Benhabib 2002; Koopmans *et al.* 2005). Why is this so? A sketch of Dutch policy may explain this. Access to Dutch citizenship is relatively easy; naturalisation is possible after five years of residence. Yet, it is not so much its immigration policy, but primarily the Netherlands' integration policy that gave it its image as a multicultural society. In the Minorities Memorandum of 1983 the Dutch government expressed as its basic policy assumption the view that most immigrants were there to stay. The Minorities Policy, as the integration policy initially was named, considered for a certain time period the preservation of minority cultures as a policy objective and targeted not individual immigrants, but specific immigrant groups (Entzinger 2003).

In 1994, however, the government published the Policy Document on the Integration of Ethnic Minorities to replace the Minorities Memorandum. In it the government expressed its view that the preservation of minority cultures was a responsibility of the communities themselves, not a public responsibility. The policy focus shifted to economic integration, from which social and cultural integration were thought to follow, and from immigrant groups to the individual immigrant (*ibid.*). Currently, the focus continues to be on individual integration, but now there is a stronger emphasis on cultural integration as a prerequisite for social and economic integration; the guiding idea of the new policy is 'shared citizenship'. Measures like the introduction of citizenship education, and a compulsory integration course for immigrants, are thought to facilitate integration and to ensure loyalty to the central values of Dutch society.

Yet this shift in integration policy does not mean that the Netherlands has fully abandoned its politics of group recognition. Accommodation of immigrants' religious needs is not dependent on the integration policy structure; they can appeal to the Dutch pillarised law and rules. Pillarisation refers to the segmentation of Dutch society along confessional lines that existed until the 1960s. It meant that each group had its own state-funded schools, media, hospitals and welfare organisations, but also its own trade unions, housing corporations or sporting organisations. As established religions already had the right to establish their own institutions and received public funding, this right could not be denied to new religions (see Rath et al. 2001).

The public accommodation of immigrant groups' religious activities and institutions is a legacy of pillarisation. Yet, the impact of pillarisation is, at least in my understanding of Dutch political culture, far greater than that. Pillarisation is closely connected to the emancipation movements of Dutch religious minorities, such as the Catholics and the Dutch Reformed Church in the nineteenth century. They wrested themselves from their subordinate position by developing their own institutions, to begin with their own schools. In the pillars the different denominations developed into strong power blocs; this pattern of group-bound emancipation is known in the Netherlands as *emancipatie in eigen kring* (emancipation in one's own circle).¹ As the pillars grew in strength, pillarisation also began to function as an institutional measure to pacify the by then equally strong power blocs of the different denominations. The pillars's elites worked together in ruling the country, while the ordinary believer spent his life within the confinement of his pillar (Lijphart 1975).

I am inclined to see in pillarisation the expression of a specific Dutch interpretation of equality and neutrality. In contrast to a strictly secular model of neutrality, pillarisation is a model in which all collective identities have an equal right to manifest themselves in public. This explains why religion can be as highly visible in Dutch public life as it is. Moreover, the right to equal treatment of rival conceptions of the good is interpreted as a material rather than only a formal right to equality – hence the public funding of religious institutions. Moreover, the Dutch Minorities Policy most likely took the shape it did because of pillarisation; this is how, in the Dutch political imagination, emancipation of minority groups takes place.

Yet there is also a serious drawback to this. It is, for instance, still current practice, even in official documents and statistics, to refer to people of immigrant origin as Turks, Moroccans, Surinamese, etc., although many of them are Dutch nationals and born in the Netherlands. This corresponds with the public perception of immigrants: polls show that they are not seen as Dutch (Dagevos et al. 2004). Hyphenated identities are very rare in the Netherlands. In effect, immigrants feel excluded from Dutch identity (e.g. Ghorashi 2003). It is these nationalist sentiments that an anti-immigrant party like the List Pim Fortuyn (LPF) could draw on. Hence, while since the 1960s the Netherlands secularised and de-pillarised, what has remained untarnished is a thick notion of Dutchness that excludes people of immigrant origin.

Pillarisation then seems to have left a double legacy: it created the social space for the public recognition of collective identities, from which Islamic groups benefited, yet also allowed for an exclusive ethno-cultural notion of national Dutch identity. This was never a problem for the old denominations, as their Dutchness was never at stake. This is not so for immigrant groups; they seem to be locked up in their ethno-cultural identities and locked out from Dutch identity.

Headscarves in the Netherlands

The question now is what, if anything, of this double legacy is reflected in public debate and policy on the Islamic headscarf. It should be noted at the outset that the Islamic headscarf is very much accepted in public life in the Netherlands. Department store Vroom and Dreesman and supermarket Albert Heijn have even designed special headscarves for their personnel in the business colours and with the business logo printed on it. In public institutions like local social services, local passenger transportation systems or prisons it is generally accepted if personnel wear headscarves (Okma 2003).

There is a debate on cultural diversity and gender in the Netherlands. It is to the credit of immigrant women's groups, and in particular politician Ayaan Hirsi Ali, that subjects like honour killing, female genital mutilation and domestic violence in immigrant families are on the political agenda. Yet the Islamic headscarf, although frequently discussed, is not primarily debated in terms of gender equality. One of the few exceptions is Ciska Dresselhuys, editor-in-chief of the feminist magazine *Opzij*, who publicly stated that she would not hire a journalist wearing a headscarf, because she thought this incompatible with the feminist character of *Opzij* (Schutte & Schottelndreier 2003). The real dividing issue, however, is public neutrality, and the dividing line between proponents and opponents is not between immigrants and the Dutch, nor between feminists and non-feminists. Immigrant spokesmen take positions on both sides; while jurist Afshan Ellian, a refugee from Iran, thinks that the headscarf is incompatible with state neutrality, Milli Görüs leader Hacı Karacaer defends Islamic women's freedom to wear or not to wear the headscarf (Ellian 2003; Janssen 2003). Feminist immigrant women are also represented in both camps. While Hirsi Ali (2002) opposes the headscarf, Fatima Elatik, councillor in Amsterdam, herself wears a headscarf and defends the right of women to wear it.²

Conflicts about the wearing of the headscarf are usually brought before the Commission on Equal Treatment.³ In nearly all cases where it has been consulted, the Commission has ruled that prohibiting wearing of the headscarf was unjustified, because it contravenes the Dutch anti-discrimination law. The commission considers the headscarf as an expression of a Muslim woman's religious conviction, and as such protected by the right to freedom of religion. The commission argues that freedom of religion is a fundamental right; it can be restricted only if it is demonstrated that the aim to restrict the exercise of this right is legitimate, and that a ban meets the requirements of proportionality and subsidiarity (Judgment 2003-40

Section 5.9). ‘Legitimate’ means that the aim (of a ban) must be weighty and non-discriminating, while the latter two requirements mean that the same goal cannot be reached with another measure that is less discriminating (as a restrictive measure is always, yet not necessarily unlawfully, discriminating) and that the measure is proportional to its aim. As these conditions are usually not met, the commission generally rules in favour of the Islamic woman concerned. The commission held on to this ruling in the case of the wearing of the headscarf by public officers. In a conflict between a public primary school and a trainee who refused to take off her headscarf in the classroom, the commission ruled in favour of the latter. The school brought forward several arguments for its policy on headscarves, among them that it wanted to protect Islamic girls from liberal homes against pressure from their more stringent fellow believers. This gender argument was not taken into consideration, but the argument that the headscarf contravenes the neutrality of the public school was. What does educational neutrality in the Dutch context mean then? Due to again pillarisation the Netherlands has a system of public and denominational schools. While denominational schools have the right to discriminate on the basis of religion, public schools do not have that right. The public school is open to all, irrespective of their religion or philosophy of life. Teachers do have a responsibility to teach their pupils to respect the different moral values that exist in Dutch society. The commission judged that the fact that the trainee ‘believes in a religion and expresses this by wearing a headscarf does not preclude her having an open attitude and being capable of teaching in accordance with the character of the school as a public educational institution’ (Judgment 99-18: 3–4, cited in Saharso 2003: 15). Therefore it was not a requirement of the job for the trainee to remove her headscarf, and consequently the commission ruled in favour of the trainee.

The commission’s judgments, although not legally binding, met until recently with great social acceptance and the parties usually voluntarily accepted them. This changed in 2001. The case in which the commission’s ruling was questioned was that of a vice assistant court’s clerk. The court in question refused to hire the clerk because she was not prepared to take off her headscarf during public court sessions. Again the case was framed as a conflict between religious freedom and the neutrality of public office. The commission judged that to exclude clerks with headscarves from the office in order to guarantee an impartial judiciary was a disproportionate measure and violated the anti-discrimination law (Verhaar & Saharso 2004). This time, however, the judgment gave rise to a hot public debate. Eventually the Law Minister intervened and declared that headscarves and other religious symbols are not allowed for court personnel, because ‘particularly in a multicultural society, it is of vital importance that people in court can trust judges to take distance from their personal beliefs’ (*ibid.*: 187). The National Board for Jurisdiction concurred with this view and agreed that religious symbols are not allowed in the courtroom (*ibid.*: 188).

In another development in November 2002, students at an Amsterdam educational centre started to wear the *niqaab*, a garment that covers the face, and were

eventually sent away from school on 23 January 2003 when they refused to remove it. This time the Commission on Equal Treatment ruled that the ban was lawful, because there were objective grounds for its justification. The main ground was that the *niquaab* hampered communication, which is essential in a pedagogical relationship (Judgment 2003-40). The minister of education saw in the case cause to issue a guideline on clothing in schools that was based on the criteria of the Commission on Equal Treatment. The minister explained that the guideline was not meant to ban headscarves in general, but that only the *niquaab* did not meet the criteria (Leidraad kleding op scholen 2003). Next, a proposal was made in parliament to forbid the wearing of headscarves for all public officers, yet this was rejected.⁴ Recently, the city council of Rotterdam discussed headscarves for public officers, but again decided that as long as they do not cover the face they are allowed.⁵ Hence, the Islamic headscarf has clearly become more contested over the past years, but this has as yet not resulted in a general ban on headscarves in the Netherlands.

For us it is important to note that the debate on the Islamic headscarf in the Netherlands takes place in terms of liberal principles. It is not, however, about gender equality, despite the fact that gender equality has a strong advocate in the person of Ayaan Hirsi Ali.⁶ The debate is mainly about public neutrality and how that should be balanced against other competing principles. The accommodating institutional and legal practices concerning the Islamic headscarf that evolved in the Netherlands are based, it seems, on a common tacit understanding among all political actors of the functioning of the Dutch political system. In line with their tradition of pillarisation the Dutch seek to reach neutrality not through a strict hands-off approach, but through a policy of evenhandedness among different convictions in public life. Public neutrality does as yet not require in the eyes of the Dutch a general ban on headscarves. The policy line is that each individual case should be examined as to whether there are functional reasons to forbid the wearing of the headscarf.

Germany: An Ethno-cultural Model

In the literature on nation, migration and citizenship Germany figures as the prototypical example of the ethno-cultural citizenship model. This is primarily because of the German rules concerning access to citizenship that existed until 2000. Several authors have signalled the anomaly that the largest immigrant group in Germany, Turkish labour migrants and their children, do not possess German citizenship, despite long residence or even birth in Germany, while immigrants from Eastern Europe, who were considered as co-ethnics, had (at least until 1993) direct access to German citizenship (e.g. Brubaker 1992; Joppke 1999; Koopmans 1999). The explanation for this discrepancy is the German definition of who is a member of the national community as it was expressed in German nationality rules. Until the reform in 2000 of the German nationality act there existed high barriers for non-Germans to acquire German citizenship; birth on German territory gave no automatic right to German nationality. The requirement that applicants had to prove

'*Bekennnis zum deutschen Kulturkreis*' (commitment to the German cultural realm), while participation in a political emigrant organisation was considered as proof that the applicant lacked this commitment to Germany, was also telling (Koopmans 1999: 630). Enshrined in German naturalisation rules was the idea, as Joppke put it, that 'the adoption of German citizenship was always exceptional and contingent upon a magic transformation of the applicant into a quasi-ethnic German *before* being granted the formal membership status' (Joppke 1999: 189, emphasis original).

Who, then, was a German according to German law? According to Article 116 of the German Constitution Germans need not live in Germany, nor possess German nationality. 'Members of the German people', according to Article 6 of the Federal Law on Expellees, 'are those who have committed themselves in their homelands to Germanness, in as far as this commitment is confirmed by certain fact such as descent, language, upbringing or culture' (quoted in Koopmans 1999). This ethno-cultural notion of German citizenship is described by Brubaker (1992) as the outcome of the German state-formation process in the nineteenth and early twentieth centuries. One would expect that the experience with the Nazi regime would have discredited this ethno-cultural notion of German citizenship, yet it continued to exist. The explanation is, according to Brubaker, that the founders of the West German Federal Republic did not want to validate the division of Germany. Next, there was the massive post-war expulsion of some twelve million ethnic Germans from Eastern Europe and the Soviet Union. Two-thirds of them were resettled in West Germany and conferring the legal status of 'German' on them was a way to regulate the status of these refugees and expelled people. Later, ethnic Germans from Eastern Europe and the Soviet Union were allowed to come, because in the Cold War period these other ethnic Germans were considered as having escaped communism (Brubaker 1992: 165–171).

We see this ethno-cultural citizenship model reflected in the realm of integration, in the sense that Germany long kept to the myth that it was not an immigrant country and did not develop an overarching integration policy. The prevailing view was, after all, that there were no new Germans that needed to be integrated into German society. Consequently, Germany has done little in the way of recognising immigrant groups' cultural claims. There was also little need for cultural recognition: organisations of Turkish immigrants were and to a large extent still are homeland oriented and did not make claims for cultural recognition by the German state (see Joppke 1999: 208–209). As Koopmans and colleagues (2005: 174) suggest, their legal status as foreigners caused all political actors, including the Turkish immigrants themselves, to see them not as part of the German community. Next, there is German history that hampers the articulation of cultural claims as there is in Germany due to its national socialist past among the left a strong resistance to the re-introduction of strong concepts of cultural group identities into the political (see Benhabib 2000: 78; Joppke 1999: 209).

In effect, the relevant political actors were, albeit for different reasons, not interested in a reform of the German nationality law. While the right was inspired by

an ethnic notion of citizenship that excluded culturally different people from German citizenship, the multicultural left thought the idea of a national identity obsolete and expected it soon to be replaced by a European identity. Hence the left sought to strengthen the position of immigrants not through making German citizenship accessible to them but by enlarging their rights as foreigners (Joppke 1999: 188–189).

The reform of the German Nationality Act in 2000 made it easier for immigrants and their children to obtain German citizenship. The reform makes clear that German citizenship for immigrants has been accepted in Germany. This has paved the way for a structural integration policy that is based on an encompassing vision on immigration and integration. The Süsmuth Commission was installed to develop that vision. In its report *Zuwanderung gestalten, Integration fördern* (Design Immigration, Promote Integration), published in 2001, it made a case for better integration programmes, elite immigration and a structural concept for future immigration, as it viewed this as inescapable considering demographic developments in Germany and Europe in general (Süsmuth Commission 2001). The Süsmuth report forms the basis of the current immigration and integration policies.

While Brubaker stated in 1992 that ‘Germany does not understand itself as a country of immigration for non-Germans’ (Brubaker 1992: 174), which led him to expect that Germany would not adopt a civic notion of citizenship that enabled foreigners to become German citizens, it eventually did so. It required the fall of the Iron Curtain and Germans, right and left, to get used to the idea that Turks could be Germans, but it happened. This once again underlines that national traditions need sustenance in the present in order to stay alive. Yet, this short excursion into German ideas on nation, migration and citizenship is also proof to Brubaker’s thesis that the political imagination of Germans was long dominated by an ethno-cultural model of citizenship that was not dependent on a relationship with the national territory of the state. The question is whether this model has really been fully relinquished or whether we can see its legacy in the political struggle over the Islamic headscarf.

Headscarves in Germany

Gender and cultural diversity seem to have attracted less public attention in Germany than in the Netherlands, which is not surprising given the German under-politisation of immigrant culture and identity. That is not to say that the Islamic headscarf is not being discussed in Germany. The focal point of the German debate is the case of Fereshta Ludin, a schoolteacher in the federal state of Baden-Württemberg, who for five years fought a legal battle over the right to wear the headscarf.⁷ Ludin is an Islamic woman of Afghan descent who has lived in Germany since 1987 and who became a German citizen in 1995. She did teacher training, passed her exams in July 1998 and has since qualified to teach in ‘Grund-’ and ‘Hauptschule’; that is, to children aged 4–14. When she applied for a job as a teacher, the Upper School Authority in Stuttgart refused to hire her, because she was not prepared to

take off her headscarf while teaching. Ludin brought her case before the Stuttgart Administrative Court, which on 24 March 2000 ruled in favour of the School Authority. Then she appealed to the Upper Administrative Court of the state of Baden-Württemberg, which turned down her appeal on 26 June 2001. Her next appeal to the Federal Administrative Court was also unsuccessful; the ruling was on 4 July 2002. Finally, she went to the Federal Constitutional Court, which reached its judgment on 24 September 2003.

What were the arguments put forward in this case? As Ludin was not prepared to take off her headscarf, the Stuttgarter Upper School Authority thought her unfit for the job of a teacher in a public school. The headscarf is, according to the School Authority, an expression of cultural limitation and therefore not only a religious, but also a political, symbol. The objective effect of the headscarf is cultural de-integration, which is incompatible with public neutrality, it opined (*Urteil: 2*).

Ludin herself expressed the view that the headscarf is part of her religious identity. A ban on headscarves would infringe on her religious freedom and hence on a fundamental right. Ludin's central claim, however, was that according to German law neutrality did not mean that the state had to fully abstract from religious relations, but to make possible a sparing compromise (*'schonenden Ausgleich'*). In her appeal to the Federal Administrative Court it was formulated thus: 'In contrast to a laicist state the Federal Republic Germany is, because of its Constitution, open for religious expression in the school realm following a so-called overarching, open and respecting neutrality. The school is no haven where one can close one's eyes to social plurality and reality. Rather the school has the educational task to prepare adolescents for what they will meet in society' (*Urteil: 5*).

The School Authority recognised the positive religious freedom of the teacher, yet there were also the negative religious freedom of the pupils, the educational right of the parents and the state's duty to neutrality to consider. These justified a restriction of the teacher's religious freedom. It explained that even if Ludin did not engage in missionary activities, the wearing of the headscarf forced pupils to engage with this expression of religious belief and as young people they are still easily influenced. Particularly, it could create considerable pressure on Muslim schoolgirls to adapt, contradicting the pedagogical mission of the school to promote the integration of Muslim pupils (*Urteil: 3*).

The Administrative Court of Stuttgart agreed that the wearing of the headscarf made Ludin unfit for the job of public school teacher and followed the School Authority's argumentation. It also recognised the danger of (unintended) influencing (*ibid.*).

The Upper Administrative Court of Baden-Württemberg followed the argumentation of the Stuttgart Administrative Court. In addition, it reasoned that the different religious convictions of the pupils and their parents met each other in the school very intensively. The conflict that arose from this demanded a compromise in practical concordance (*'ein Ausgleich in praktischer Konkordanz'*). It explained that 'the duty to public neutrality that the constitution demands is not a distancing, rejecting neutrality in the sense of a non-identification with religions and philosophies of life,

but a respecting precautionary [*vorsorgende*] neutrality, that obliges the state to guarantee both the individual and the religious communities a space to exist' (*ibid.*: 3–4). Because of this precautionary neutrality the state should not endanger the religious peace in the school. The negative freedom of the pupils of other faiths and the pedagogic right of parents with respect to religion should take precedence over the teacher's positive religious freedom.

The Federal Administrative Court also saw the conflict as basically between positive and negative religious freedom and judged again that the latter should take precedence (*ibid.*: 4–5).

The Federal Constitutional Court, however, came up with a different judgment. It ruled that the mere fact of a schoolteacher wearing a headscarf and the possible religious influence and religious conflict that could ensue were not enough to declare the teacher as unfit for teaching in a public school, that is to say, under the existing laws in Baden-Württemberg. It noticed that the legislators in the federal states are free to adjust their law if they find it wanting. It added that the growing religious diversity in society could be a reason to revise the law and legal limitations on the freedom of religion were conceivable. Moreover, there might be good reasons to give the public duty to neutrality in the educational realm a more strict and more distancing meaning than it has had until now. How to react to the changed social relations is, however, not for the court to decide, but is a task of the democratically legitimised federal state legislator (*ibid.*: 14–15). The court therefore issued a double judgment:

1. A ban on teachers wearing the headscarf in school and while teaching does not find enough legal ground in the standing law of the federal state of Baden-Württemberg.
2. The change of society that is connected to growing religious plurality can be a cause for the legislature to redefine the allowed range of religious relations in the school. (*Urteil*: 1).

Since then eight states have passed new regulations that restrict the wearing of religious clothes and symbols in schools, five of them, the Southern states ruled by Christian Democrat cabinets, making an exception for 'Christian-Occidental' clothes and symbols. The other eight states have not (yet) passed any regulations (Berghahn and Rostock, 2007). Remarkable is the exception for Christian and Jewish clothes and symbols in the five Southern states. The justification for this is, as Baden-Württemberg formulated it in its new law that "the representation of Christian and Occidental values or traditions corresponds to the educational mandate of the constitution and does not contradict the required behaviour (that is for teachers to refrain from any expression of a political, religious or other worldview which could endanger the neutrality of the state or peace in the school, SS)" (law cited in Joppke 2006). Hence, crucifixes, crosses and nuns habit are not banned from the public school, because they are symbols of Christianity, which is considered as part of, if not constitutive for, German national culture. The Islamic headscarf on the other hand is interpreted

as a political symbol. The three states that request strict neutral appearance without exceptions for Christian-occidental symbols, Berlin, Bremen and Lower Saxony, are all ruled by left wing cabinets (Berghahn and Rostock, 2007).

The debate in Germany is varied. Franz Josef Jung, the leader of the Hessen Christian Democratic Parliamentary Party, explained that the headscarf symbolises oppression and lack of freedom of women and is representative of a fundamentalistic God-state (Jung 2004). Also Gerhard Schröder, in 2004 speaking as Federal Chancellor and SPD-leader, is in favour of a ban: 'if a young woman in society wants to wear a headscarf, I find this tolerable. If she wanted to do this as a public officer I would say: "No, there we expect another way to dress."' ⁸ Federal President Johannes Rau has also joined the debate: he said in his New Year's interview of 2004 that all religions should be treated equal. 'If the headscarf counts as a religious expression and missionary textile, then so does the cowl and the crucifix', said Rau. ⁹ It will come as no surprise that the Bavarian Prime Minister Edmund Stoiber reacted critically, saying that Rau 'should not question our own identity as a Christian country' (*ibid.*). The president of the Catholic Bishops Conference, Cardinal Karl Lehmann, doubted whether Christian and Islamic symbols could be equated. More surprising is that Wolfgang Thierse, the Social Democratic chairman of the federal parliament, agreed to the critics. He pointed out that the headscarf is for many Islamic women a symbol of oppression (*ibid.*). In this standpoint he found feminist Alice Schwarzer on his side (Schwarzer 2003), but also Necla Kelek (2005) and Seyran Ates (2003), both of Turkish descent, while other feminists – among them former Foreigner Commissioner Barbara John and Rita Süsmuth – have signed a petition 'No lex headscarf, for religious diversity instead of forced emancipation' (*Aufruf wider eine 'Lex-Kopftuch!'*, Emma 2004:1).

German public thought on the headscarf is far from unified, as is the policy reaction. As the federal states have great autonomy, we see a wide variation of legislation. As in the Netherlands the debate is very much about the meaning of the neutrality principle, which is also the central term in the justification of policy measures. Unlike in the Netherlands, the reigning view among the German legislators and courts of law is that a teacher in a public school should not wear a headscarf. The key word to understand this view is 'precautionary neutrality'. It is precautionary in a double sense: to guarantee the negative freedom of the pupils to be protected against the confrontation with other people's religion and to prevent possible religious conflict and thus to guarantee peace. Hence, the positive freedom of the teacher to express her religious convictions may be restricted both for the sake of the negative freedom of others and for the sake of peace. This would be frowned upon by classical liberal theory, because it means that peace concerns are given priority over a more fundamental freedom right, even in the absence of actual conflict. To borrow the words of Carens: it seems as if here Germany's commitment to its own ethno-cultural model has trumped its commitment to liberal democratic principles (Carens 2000: 26). This is even more true for other policy measures. To allow the crucifix and the habit, but not the headscarf, in the classroom, seems to conflict with the liberal idea of equal treatment of religions. These measures like the

references that are made in the German debate to the Christian signature of the German nation can only be understood as reflecting an ethno-cultural national self-understanding. The negative position of the SPD-leaders towards the headscarf is noteworthy. I am inclined to think it is as well inspired by German history. The German left, while rejecting an ethno-cultural notion of nationhood, is because of Germany's national socialist past allergic to the re-introduction of strong concepts of group identity and therefore not drawn to a multiculturalism Dutch style, but rather to a French style civic-assimilationism.

Conclusion

I have sketched the Dutch citizenship model as basically multicultural, which has historical roots in the pillarised society that the Netherlands once was. The German citizenship model I have sketched as basically ethno-cultural, that finds its roots in historical German notions of nationality. These models were reflected initially in the immigration and integration policy of each of the countries; in the Netherlands in its policy of integration with preservation of cultural group identity and in Germany in its ethno-cultural inspired policy on access to citizenship. The two countries' immigration and integration policies seem to have converged over time. While the Netherlands shifted towards a more cultural assimilationist integration policy, Germany moved towards a more civic-based policy on access to citizenship.

We do not find this convergence in the debate and in particular in policymaking on the Islamic headscarf. While an accommodating policy prevails in the Netherlands, in Germany some eight federal states have legislation to ban the headscarf. This is remarkable, because Germany, like the Netherlands, does not follow a hands-off approach of strict neutrality towards religion. The difference I explain out of each country's citizenship tradition. A multicultural model, and certainly the Dutch pillarised variant, allows for relatively great recognition of cultural difference and grants religious identities much visibility in public life. Religious symbols, irrespective of which religion they symbolise, therefore find easy acceptance in Dutch public life. We see this in the Dutch public debate and public decision-making on the headscarf. The German laws banning headscarves reflect in fact a double historical heritage. The German voices in the public debate that claim Christianity as constitutive for German national culture and the policies of the five federal states that allow for Christian-Occidental symbols, but not for the Islamic headscarf seem to carry on the ethno-cultural model of the nation as a culturally homogeneous community. An ethno-cultural model is not necessarily hostile to the expression of religious identity in public life, as long as it is the majority's religion. The German left is divided over the issue. We see this back in the debate: some, and among them feminists, are pro, others contra headscarves in the public sphere. Those contra headscarves reject an ethno-cultural notion of the nation. This is probably in reaction to Germany's past. Yet for the same historic reasons they have developed an aversion of strong collective identities into political life. They therefore prefer to replace ethno-culturalism not by Dutch multiculturalism, but by French civic-assimilationist *laïcité*.

A further thing to note is that these debates and policy-making are so strictly national in their orientation and that in both countries the headscarf is not framed as a gender issue, but predominantly as a conflict between public neutrality and religious freedom. Why gender concerns play only a minor role in the debates in both countries remains to be explained. I would expect that what is relevant here is how the citizenship of women is given meaning in both countries. The gender dimension of the headscarf would be that it expresses a worldview in which women belong in the private sphere. Dutch and German political culture has for a long time been dominated by Christian parties, which have always put an emphasis on family values and supported the idea that the natural place of a woman is at home. Secondly, the cultural revolution of the sixties has affected feminism in the sense that many Dutch feminists see emancipation in broader terms than just exchanging the conventional mom-at-home role for the role of the ambitious career-woman (e.g. Pessers 1994). If this also holds for Germany, it would make feminists more tolerant of a choice for a more traditional lifestyle, and by implication of a choice for a headscarf. A comparison with France, where many feminists have engaged in the headscarf debate (see Cadot et al. 2007) suggests that in this realm too, there may exist nation specific traditions. This is of course what the notion of gender regime is drawing attention to; citizenship is gendered and gender regimes vary between countries (Lewis 1992). What I want to suggest is that both the German ethno-cultural tradition and the Dutch version of multicultural citizenship may grant more space to claim the right to difference and related gender differentiated roles than the civic-assimilationist French tradition.

Another effect of the framing of the headscarf debate in terms of neutrality is that it obscures the agency of Islamic women. We know from Britain and France that spurred by international events and in reaction to their deprivation and inferiorisation Muslim communities have reverted to traditional Islamic values. The impact on gender relations has been that young men have turned on the women of their community and began policing their behaviour (Afshar 1994; Amara 2003). Gender relations intersect with community dynamics and the relationship with wider society. When women choose to wear the headscarf they may be pressurized to do so, but it may also be a choice for (a modified) tradition, a defiant reconfirmation of their religious identity, or a reaction to contradictory identity and loyalty claims. A debate in terms of public neutrality versus religious freedom ignores the complex reality of their lives. Nor is it obvious that a ban on headscarves would add to their autonomy, as it limits choice. While it might be wished that the voice of Islamic women would be more heard in the debate, it is also because of this missing gender perspective that the debate is still very much over their heads.

Notes

1. All translations of Dutch and German quotes are mine.
2. 'Moslima sluit huwelijk van homo-politicus', *Trouw*, 3 April 2003, p. 3.

3. There are of course more conflicts, but if parties do not bring them to a court or the Commission these generally remain undocumented.
4. *Kamervragen met antwoorden 2003–2004*, 19 March 2004, Lower Chamber no. 1073.
5. 'Kledingvoorschrift voor ambtenaar achter balie', *Rotterdams Dagblad*, 19 February 2005.
6. After a conflict about her Dutch nationality in 2006, which caused the fall of the Dutch cabinet, she left the country for the US where she is now working for the American Enterprise Institute for Public Policy Research, the conservative think-tank of the Bush administration.
7. All information on the Ludin case is based on the Judgment of the Federal Constitutional Court (Urteil BVerfG, 2 BvR 1436/02 3.6.2003, herinafter Urteil) which I checked with the judgments of the lower courts.
8. Gefährlich; Intoleranzen: Die Leitkultur untergräbt die Sittlichkeit, *Frankfurter Allgemeine Zeitung*, 24 November 2004, p. 33.
9. Kopftuch schlimmer als Kreuzifix? Streit um religiöse Symbole in Schulen, *ZDF Politik & Zeitgeschehen*, <http://www.zdf.de/ZDFde/inhalt/14/0,1872,2094926,00.html>.

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