

The burkini polemics: How a legal misunderstanding is fuelling France's witch-hunt of Muslim women

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Of course, banning women from wearing what they want is illegal in France. The establishment claim they want Muslim women to achieve independence yet are depriving them the means to do so.

While the burkini debate has stoked considerable coverage and discussion abroad, the debate is nothing new at home. To me, it seems to be a follow-up in a long wave of anti-Muslim measures in France preceded by intense media propaganda for at least 30 years, arguing that Islam is incompatible with democracy and thus a danger for France.

The present witch-hunt against women wearing a burkini, and their exclusion from public beaches, marks the unrolling of a movement to restrict the fundamental liberties of Muslim women. The rhetoric used to justify this exclusion is becoming more and more violent. At the forefront of this battle is the French prime minister, Manuel Valls. In 2012 – while serving as minister of the interior – he declared that Jews may wear their kippas with pride. Yet, in 2013, he said the headscarf was, for him, a problem. He has consistently repeated this line, conflating the headscarf with “veil” to dangerous, provocative effect. The League for the Rights of Man – yes that is what the French call human rights – has referred one of these decrees to the highest judicial authority in matters of administrative justice, the Conseil d'Etat. This institution declared on 26 August that the mayor has exceeded his powers and failed to present facts to prove the burkini threatens public order. But the most interesting part was the answer to the mayor's decree that *laïcité* – secularity – does not exist in public places.

The concept of *laïcité* rests on the law of 1905, which decrees that the state and religious authorities are separate. Religious authorities can no longer – as they could before – intervene in the affairs of the state and the state must no longer – as it could before – intervene in religious affairs. The state protects freedom of conscience, and therefore all beliefs, religious or not, equally, and does not subsidise any. That it can be interpreted so that the state has the right to regulate expression of opinions or beliefs in public is founded, in part, on bad faith, but also on subsequent events in France, which are not laws but administrative decrees. These decrees were passed in the 1920s and the 1930s. They required public servants to assume a neutral appearance and not wear signs of their beliefs or opinions. (The French are not aware that France is the only country in the world to require neutrality of appearance from its public servants.)

Another source of misunderstanding lies in the fact that *services publics* is used to name the services of the state – such as schools, hospitals, administrations – and that the places that belong to no one and therefore to everyone, such as the street to start with, are called *espace public*. The latter means that it is the space of the public; but increasingly, politicians (as well as the media)

playing on the word reclaim it as the space of the state. It may seem a minor point but it is crucial in attempting to understand how the law allows Muslim women in France to be dehumanised. The Conseil d'Etat has made it abundantly clear that the mayor's decree in Nice constitutes a "grave and blatantly illegal attack against the following fundamental freedoms: freedom to come and go, freedom of conscience, and personal freedom", slowing down the witch-hunt for now.

But for how long? And will Muslim women who wear a headscarf – who cannot work in state services and are increasingly excluded from the private sector – ever recover the right to earn a living? A slow handclap then for the French establishment that claims to wish so ardently for Muslim women to achieve independence from their men, and yet deprives them of the means to acquire it.

Christine Delphy

P.S.

* The Guardian. Monday 29 August 2016 18.20 BST Last modified on Tuesday 30 August 2016 12.50 BST:

<https://www.theguardian.com/lifeandstyle/2016/aug/29/legal-misunderstanding-france-witch-hunt-muslim-women>

* This article was amended on 30 August 2016 to clarify that a reference to Muslim women being unable to work in state services was to Muslim women who wear a headscarf.

* *Separate and Dominate: Feminism and Racism After the War on Terror* by Christine Delphy (Verso, £14.99) is out now.