Political debates on Islamic headscarves and civic integration abroad in France and in the Netherlands: What can models explain?

Bonjour, S.A.; Lettinga, D.

Political debates on Islamic headscarves and civic integration abroad in France and in the Netherlands: What can models explain?[1]

Saskia Bonjour & Doutje Lettinga

Abstract

This paper evaluates the explanatory capacity of 'national models' of migrant integration, through a comparative analysis of the regulation of Islamic headscarves on the one hand and civic integration abroad policies on the other hand in France and the Netherlands. It argues that 'national models', defined as historically rooted conceptions of nationhood, polity and belonging, matter because they enable and constrain the framing of policy problems. However, the impact of 'national models' on the policy outcome is determined by the political and institutional context in which decision making takes place.

1. Introduction

A few years ago, Christian Joppke provocatively announced the end of 'national models' (2007: 1-2). In doing so, he launched a frontal attack on a well established theoretical field, in which national regimes of citizenship and church-state relations are used to account for country specific policies regarding immigrant integration (Brubaker, 1992; Castles, 1995; Entzinger, 2005; Favell, 1998; Koopmans e.a., 2005) and, more specifically, Muslim immigrants (Fetzer & Soper, 2005; Koenig, 2003, 2007; Modood & Kastoryano, 2006). In view of the current convergence of migrant integration policies in Europe, Joppke argues that

[1] The authors are endebted to the anonymous reviewers, Ines Michalowski, Claudia Finotelli, and Karin Schönwälder for their constructive comments on earlier versions of this paper.

'the notion of national models no longer makes sense, if it ever did' (2007: 2). Other scholars have also criticised the 'national models' approach for being too normative, for providing teleological explanations, and for being unable to account for change, or contrasting opinions or policies, within countries (see Michalowski & Finotelli, in this volume).

In this paper, we endeavour to explain the different policy responses to two issues related to (Muslim) migrant incorporation, in order to assess the value of these model theories. These issues are, first, the donning of the headscarf by Muslim women and, second, civic integration abroad policies that require immigrants to integrate before they are granted permission to enter a country. The Netherlands and France introduced such integration requirements in 2005 and 2007 respectively. The Dutch government requires migrants to pass a test, and offers neither courses nor learning material. The French government, by contrast, requires only that migrants *participate* in an evaluation and course, not that they achieve a certain result, and offers the courses for free. Thus, while both countries have felt the need to design civic integration abroad programs, the French program is much more lenient than the Dutch one. At first glance, this appears to contrast sharply with the classic 'national models' approach, which would lead us to expect that the 'multiculturalist' Netherlands would accommodate ethnic and cultural differences, while 'assimilationist' France would push migrants to adapt to the French mould.

By comparison, the current French and Dutch approaches to the headscarf would seem to fit with classic 'national models' theories very well. While France adopted a law prohibiting all ostensible religious signs in public schools in 2004, it remains all but beyond debate among Dutch politicians that both teachers and pupils should be allowed to wear headscarves.

In order to examine how and to what extent 'national models' have influenced French and Dutch policy responses, we take a closer look at the framing of the French and Dutch parliamentary debates that pertain to civic integration policies (2004-2007) and to the

headscarf in public schools (2002-2007). In this paper, we define 'national models' as conceptions of nationhood, polity and belonging that are embedded in country-specific and historically rooted laws and institutions (Brubaker, 1992) but that may take on (competing) meanings in policy-discourse and subsequently *shape* (though not determine) policies (Favell, 1998). In other words, we use 'national models' to explain policy outcomes, rather than as typologies that may be used to qualify national policies or the differences between them (cf. Castles, 1995; Koopmans et al. 2005). We argue that the 'national models' approach may indeed yield valuable insights into the differences between national migrant policies, but only if we take into account (shifting) power-constellations, and the institutional contexts in which policy making takes place.

The data we used for this paper include parliamentary debates, questions, policy reports, and extracts of round tables that we found through exhaustive keyword searches of parliamentary databases. The periods studied for the headscarf (2002-2007) and civic integration abroad (2004-2007) correspond to the periods when policy formulation resulted in actual policy decisions in these respective countries. The debates were analyzed using the frame analysis method (Benford & Snow 2000; Stone, 1989; Verloo 2005). The two key policy frame dimensions that we focused on were the diagnosis (definition, perceived cause, and expected effect of the problem) and the prognosis (the proposed solution to that problem).

2. The content of the debates: problem definitions and solutions

Female Islamic head and body covering in public schools in France and the Netherlands

On 15 March 2004, the French government passed a law on secularism that banned the wearing of 'ostensible' religious symbols in all public primary and secondary schools.[2] Under

[2] Loi no. 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.

this law, school principles are allowed to require pupils to remove headscarves, kippahs and large crosses in name of French secularism.[3]

The law finds its origin in 1989, when the first conflict was politicised between a public school in the Northern town of Creil and three headscarf-wearing schoolgirls who were expelled from school when they refused to remove their scarves (Bowen, 2007; Scott, 2007). After fifteen years of contentious political debate, with policy responses changing from initial toleration of pupils' headscarves (1989) to a Directive that allowed schools to forbid 'ostentatious' symbols of religious affiliation (1994), the right-wing *Union pour le Mouvement Populaire* (UMP) (2002-2007) finally managed to pass its law. The government's law project followed several proposals, most of which were submitted by members of the UMP and the centre-Right party Union pour la Démocratie Français (UDF). Subsequently, the government installed the Stasi Commission[4], which advised President Jacques Chirac (UMP) in December 2004 to implement the ban. After hearing the testimonies of girls and women who were being harassed for not covering their heads, the commission had come to the conclusion that Muslim groups used the headscarf as a tool to enforce their religious group identity upon individuals. Such circumstances would endanger the equality and freedom of young girls. In its report, the commission wrote: "*the headscarf, paradoxically, offers the protection to some girls that the Republic should actually guarantee*.[5]

Furthermore, the idea had emerged that the headscarf symbolized a growing 'communitarianism' among migrants. This concept stands for the formation of collective groups that isolate themselves from wider society, and restrict the lives of their members by obliging them to follow group norms (Laborde 2008: 108). Such group formation was

[3] No. 2004-118, 22 March 2004.

4 The 'Commission de réflexion sur l'application du principe de laïcité dans la République', named after its head Bernard Stasi, consisted of 19 members, ranging from academics, intellectuals and administrators to representatives of integration organisations or business life.

5 Rapport au Président de la République sur l'application du principe de laicité dans la République' (Stasi report) 11 December 2003, pp. 47-49.

considered in contradiction with the 'French model' of national unity, because citizens would primarily approach one another as members of different groups instead of as individual citizens. In order to prevent discrimination and social fragmentation, it was decided that pupils should embody shared values of equality, freedom and solidarity rather than 'ostensibly' manifesting communal differences by wearing headscarves. In the words of the then Prime Minister Jean-Pierre Raffarin, who introduced the bill to parliament, it marked "*a fundamental stage in the political project of 'living together' that serves national cohesion* (…) *Its ambition is to respond to those who would like to impose their communitarian affiliations above the laws of the Republic*"[6]

On 10 February 2004, the French parliament voted in favour of the law by a vote of 494 to 36. A more comprehensive law-proposal by the parliamentary committee on education[7], which aimed to ban all 'visible' religious and political symbols, was supported by the Socialist party but eventually rejected.[8] The only substantial objection to the law stemmed from the Communist Party. Its members argued that, instead of tackling the root causes of identity politics by combating poverty, the law would only stigmatise Muslim youngsters and ultimately contribute to communitarianism and thus to the isolation of individual girls who most needed state emancipation.[9]

In the Netherlands, pupils' headscarves have not become a political issue (Van Kuijeren, 2001; Lettinga, 2011), and public school teachers are allowed to wear headscarves without controversy. The populist Freedom Party has attempted to challenge this tolerance-oriented approach, but to no avail.[10] A parliamentary majority believes that such a ban would jeopardize Muslim women's integration into Dutch society, and interfere with their

6 AN, plenary debate, 3 February 2004.
7 Rapport Mission d'Information 1275 La Laïcité à l'Ecole: un principe Républicain à réaffirmer (Debré report), 4 December 2003.
8 AN, no. 2096 (2000).
9 AN, explanations of the vote, 10 February 2004.
10 TK Appendix to the Proceedings 2387, 26 June 2007. Cf. TK Appendix to the Proceedings 36, 11 December 2008.

emancipation. In 2003, the Balkenende II government (Christian Democrats, Conservative Liberals and Liberal Democrats) sent a clothing directive to schools that was largely based on the jurisprudence of the Commission of Equal Treatment (ETC).[11] The directive, which functions solely in an advisory manner, endorsed the right of both pupils and teachers to express their religion, also through clothing, and affirmed a commitment to non-discrimination. Only face-covers could be forbidden under these guidelines, since they could be argued to hinder communication between teacher and pupil, and endanger public safety at school. This policy was confirmed in a policy report of 2004. The government recognized a dilemma, acknowledging the fact that some girls feel pressured to cover their faces, but did not consider a ban the appropriate solution. Not only would such a ban discriminate against girls and women on grounds of sex and religion, the report argued: it would also "*hide the structural patriarchal causes of oppression*".[12]

As far as visible religious signifiers are concerned, only the Islamic face-cover has triggered policy debates in the Netherlands. During a debate on terrorism prevention in 2005, a parliamentary majority adopted a motion initiated by Geert Wilders, founder of the Freedom Party, to ban the burqa.[13] Concealing one's face would endanger public safety and contribute to social fragmentation, it was argued. Furthermore, the burqa itself was considered a symbol of female oppression. The motion was followed by two law-proposals – the first arguing for the ban of all types of face-covers (by the Conservative Liberals), and the second advocating solely the ban of the burqa (again by the Freedom Party) in public places.[14] Even though a parliamentary majority adopted the motion, the government has not implemented a full ban. Instead, the centre-Left Balkenende IV cabinet (Christian Democrats, Social Democrats, and the Christian orthodox *ChristenUnie*) presented a new plan in 2009, aiming to prohibit *all*

11 'Leidraad Kleding op Scholen', 11 June 2003. WJL/2003/23379, 2 June 2003. WJL/2003/25011, 10 June 2003.
12 TK 29614 (2): 13-14, 1 June 2004.
13 TK 29754 (41), 10 October 2005.
14 TK 31108 (1-4), 12 July 2007. TK 31331 (2-3), 24 January 2008.

forms of face covering, in both public and (state-funded) private religious schools – a move that was supported by both the Left and the Right.[15] Despite the general ban, the primary focus was still the Islamic face cover, as we may infer from a statement made by the Social Democrat Minister of Education, Ronald Plasterk: "*the burqa and niqab are backward. They are women-unfriendly and hinder integration. We all agree upon that.*"[16]

Civic integration abroad: integration mechanism or selection mechanism?

In the Netherlands and in France, recent political debates about migration and integration have been marked by an atmosphere of crisis and failure. As a result of past and present immigration flows and failing immigrant integration, French and Dutch politicians fear that their societies are disintegrating into parallel, isolated, possibly hostile communities. As a partial solution to this problem defined in highly similar terms, the Netherlands and France have introduced integration requirements for family migrants that must be fulfilled before they are granted entry into the respective countries.[17]

In France, the proposal for a civic integration abroad program was tabled by the UMP-dominated Fillon government, and adopted in 2007. It stipulates that family migrants' knowledge of "*the language and values of the Republic*" must be evaluated before they are granted entry.[18] Should an applicant's evaluation reveal insufficient knowledge, the applicant will be obliged to participate in a course, organised and financed by the government. Admission to France is conditional upon participation in the evaluation and course, and not upon on achieving a certain level of knowledge.

According to the government and the governmental majority in Parliament, the objective of the new program was to "*globally improve the integration process*". It was hoped that family

15 TK 31200 VII (209), 8 September 2008.
16 TK 31700 VIII (127), 24 December 2008.
17 In addition, in the Netherlands, 'religious leaders' are required to pass the civic integration abroad exam.
18 Code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA) L211-2-1.

migrants, who make up the majority of immigration flows, would be better prepared for their arrival in France. In addition, predicating admission to France upon this evaluation was hoped to provide the government with a powerful mechanism for ensuring effective participation in the integration courses. The pressure instruments at the government's disposal once migrants had entered France were much less efficient.[19]

The Dutch civic integration program was presented by the centre-Right Balkenende government and adopted in 2005. It introduced a new entry criterion for family migrants: they would be required to possess a sufficient knowledge of Dutch language and society. Unlike the French program, the Dutch policy predicated entry into the country upon passing an exam, and not upon mere participation. Applicants' knowledge would be tested through an oral exam, conducted in Dutch Consulates and Embassies. The Dutch government does not provide courses. Applicants are charged 350€ each time they take the exam.

The government declared that the purpose of the new civic integration abroad policy was fourfold. First, integration abroad would enable family migrants to "*get by*" better upon their arrival. Second, it would allow them to make a more deliberate and better-informed choice about moving to the Netherlands. Third, it would ensure that both the migrant and his or her family member in the Netherlands were aware of their responsibility for the integration of the newcomer in Dutch society at the earliest possible stage, and of the active efforts that were expected of them.[20] And fourth, the integration requirement would work as a "*selection mechanism*": only migrants with the "*motivation and perseverance*" necessary to integrate successfully in the Netherlands would be admitted.[21]

It is this selectivity that most crucially sets the Dutch civic integration abroad policy apart from its French counterpart. Certainly, selection is not absent from the French policies. The French law that introduced civic integration abroad was presented by the French government

19 AN, Rapport No 160, 12 September 2007.
20 TK 29700 (3): 5-6, 21 July 2004; TK 29700 plenary debate: 4002, 22 March 2005.
21 TK 29700 (3): 6 & 11, 21 July 2004.

as part of president Sarkozy's overall strategy to limit *l'immigration subie* (i.e., family migration) in favour of *immigration choisie* (labour migration). Civic integration abroad is, by its very nature, aimed both at improving integration and at selecting immigration. But these two aspects are balanced quite differently in these two countries: integration constitutes the foremost concern in France, while selection is more prominent in the Netherlands. In a report about the legislative proposal written by UMP-deputy Mariani, civic integration abroad was not included under the heading of "controlling family migration" but under the heading of "favouring integration".[22] The French government emphatically presented the evaluation and courses abroad as a service offered to family migrants, describing it as an *"additional means given to strangers who wish to settle in France to prepare their integration"*.[23] The UMP rapporteur explicitly stated that "*our objective is not to limit family reunification*".[24]

The Dutch government on the other hand elaborated at length on the problematic nature of family migration. It stated that "*the large scale immigration of the last ten years has seriously disrupted the integration of migrants at group level*". Family migrants, particularly those from Turkey or Morocco, were deemed unlikely to fit into Dutch society, both in terms of their prospects on the labour market, and in terms of their cultural orientation.[25] Because of this, the Dutch government − unlike the French government − explicitly presented its civic integration abroad criterion as a *"selection mechanism"*. The criterion would not select on education, income or gender – doing so would infringe upon the right to family life guaranteed by the European Convention on Human Rights – but rather on *"motivation and perseverance"*. While reduction of immigration was *"not a primary goal"*, as a *"side-effect"* the new integration requirement was estimated to result in a decrease of family migration flows by as much as 25%. The government welcomed this prospect: *"A reduction of the*

[22] AN, Rapport No 160, 12 September 2007.
23 Sénat, plenary debate 3 October 2007; cf. AN, plenary debate 18 September 2007.
24 AN, plenary debate 19 September 2007.
25 TK 29700 (3): 2-4, 21 July 2004.

inflow of migrants whose integration in the Netherlands can be expected to lag behind will alleviate the problem of integration".[26]

In sum, we observe two far-reaching restrictive reforms – the regulation of the headscarf in school in France, and civic integration abroad in the Netherlands − as well as two more modest and less restrictive reforms: the veil in school in the Netherlands and civic integration abroad in France. How can we explain the striking differences in the framing and regulating of two different issues?

3. National models: conceptions of nationhood, polity and belonging

In academic literature, a well-established approach for explaining differences between countries' migrant policies refers to 'national models', i.e. to country-specific institutional traditions in the policy field of migration and integration. In these works, the Netherlands is often represented as an ideal typical example of a multicultural country, where religions are accommodated on equal footing, whereas France typically serves as the archetypical instance of a universalist and strictly secular country (Brubaker, 1992; Castles, 1995; Entzinger, 2005; Fetzer & Soper, 2005; Koenig, 2003, 2007; Koopmans e.a., 2005; Sniderman & Hagendoorn, 2007).

At first sight, the 'national models' approach appears pertinent for explaining the differences between French and Dutch debates and policies about Muslim head coverings in school − but not when it comes to civic integration abroad. The banning of religious clothing in public schools in France reflects the French notion of *laïcité,* under which the Republic protects the equality and liberty of its citizens by ensuring the neutrality of the public sphere. The Dutch accommodation of headscarves in public schools on the other hand stems from the belief that the state should guarantee the plurality of the public sphere, and the freedom of parents to

26 TK 29700 (6): 43, 6 December 2004; TK 29700 (3): 6, 14-15, 21 July 2004.

educate their children according to the values they adhere to. By contrast, the classic 'national models' approach seems wholly inadequate to explain why the 'multiculturalist' Netherlands has introduced a civic integration abroad program that exerts so much more pressure on migrants to adapt to the Dutch language and customs than 'assimilationist' France.

From this observation, two conclusions could be drawn. First, one could argue that while patterns of church-state relations represent deeply rooted institutional structures (since they have been crucial in shaping the nation and its polity), no such historical tradition exists in the much younger policy field of migrant incorporation. Following this line of reasoning, migrant integration policies would not have a path-dependent effect on debates and policies (cf. Sniderman & Hagendoorn, 2007). However, we find that church-state 'models' are too narrow to encompass the headscarf debates in both countries, because they do not explain the different interpretation of values like equality and diversity in France and the Netherlands. While a ban on religious symbols in Dutch public and private schools was seen as an indirect discrimination of practicing Muslims *vis-à-vis* other believers and non-believers, the French ban on all 'ostentatious' religious symbols was not recognized as disproportionally and unfairly burdening some individuals because the law treated them identically. Here countries' different ways of interpreting and managing ethnic differences come into play, which are reflected in migrant integration and antidiscrimination frameworks and exceed state-church relations. Second, one might argue that, since civic integration abroad policies are not just about migrant incorporation – and extend to the regulation of foreigners' admission and residence in the country – they are shaped by a logic of immigration control, which is inherently different from the logic of migrant incorporation. According to this argument, it would be inappropriate to invoke 'national models' of migrant incorporation to account for differences in civic integration abroad policies. However, we contend that civic integration abroad in particular, and immigration policies in general, should *not* be analyzed separately

from integration policies. Immigration and integration policies – just like policies pertaining to naturalization, discrimination, religious diversity, and so forth – are intrinsically connected policy fields, which revolve around the criteria and conditions of inclusion into a community of citizens.

We therefore propose a different perspective. To our mind, discarding the 'models' approach entirely − simply because classic typologies such as 'multiculturalism' and 'assimilationism' (cf. Castles, 1995; Koopmans et al., 2005) cannot help us account for current policy developments − seems like throwing out the baby with the bath water. We prefer to define 'national models' as conceptions of nationhood, polity and belonging that contribute to shaping migrant integration policies. Such conceptions have emerged through distinct patterns of nation building and state-formation, and therefore reflect the complex institutional frameworks of political organisations. Patterns of state-church relations serve as key part of countries' conceptions of nationhood; generic institutional legacies of organizing the polity, and collective narratives that construct a nation, conflate with ideas and institutions of religion and the secular. The legal and political status of religion is thus inherently tied to a nation's social organisation (Asad, 2006; Koenig, 2007).

In France, this historically derived conception of nationhood and polity views the nation as a political community made up of individual citizens, in which the relationship between state and citizens is not mediated by communities or organisations, and where citizenship is a state of mind or practice. As such, citizenship is based on shared universal values that can be acquired, for instance in public school. The state is a strong, centralized body that stands above its citizens and guarantees their individual autonomy through a strict secularism that requires citizens to compromise their religious faith in public. This helps explain why, in the French view, wearing the headscarf is a custom that citizens can be convinced, educated or obliged to abandon. Indeed, it is considered the duty of the state to protect young Muslim

women from social pressure to cover. This conception of nationhood and polity also helps to explain why the French civic integration abroad policy only requires participation in a course, and not the passing of an exam. French politicians have been careful to avoid referencing specific ethnic or national groups of family migrants, and the government has emphasised that knowledge of the language and values of the Republic "*is in itself a guarantee of integration*".[27] This reflects the French conviction that any foreigner regardless of his or her background can be educated to be a French citizen, as well as the belief in the universal attraction exercised by Republican values. Acquainting immigrants with French language and values is considered sufficient to induce their adhesion. Furthermore, the active role adopted by the French state in organising and financing the courses holds with the strong social engineering role ascribed to the state in disseminating the values of French citizenship.

In the Netherlands, by contrast, the heritage of pillarization has resulted in a conception of the nation as composed of minority communities, where the state is not above its citizens but rather comprised of groups representing particular interests. The state's neutrality is conceptualised as even-handedness, ensuring equal treatment of religious groups and equal access to the public sphere. Even though this pillarized society gradually fell apart in the 1960s, this interpretation of neutrality as even-handedness (Fetzer & Soper, 2005) has remained intact and created opportunities for Muslim minorities to claim rights related to religious freedom. On the other hand, another heritage of pillarization poses obstacles to ethnic minorities' ability to claim full membership: something that Halleh Ghorashi (2006) has identified as "categorical thinking". This 'categorical thinking' entails an essentialist conception of culture, where culture is considered an immutable characteristic of people, instead of an ever-changing social construct. This makes it "seem almost impossible to detach the individual migrant from his/her cultural and/or ethnic category" (Ghorashi, 2006: 8-17). Ghorashi traces this lineage of categorical thinking back to pillarization, when citizens

27 Projet de loi relatif à la maîtrise de l'immigration, à l'intégration et à l'asile, 4 July 2007.

belonged to more or less strictly divided Catholic, Protestant, Socialist and Liberal pillars – divisions that left the Netherlands with a legacy of thinking in the immutable categories of 'Us' and 'Them'.

Thus, to Dutch politicians, wearing the headscarf stands as a religious freedom right that holds equally for Islamic minorities. Until today, this point of view has remained all but beyond debate: attempts by the far-Right to problematize the headscarf in public schools have been ignored by all mainstream political parties, which have been reluctant to review this religious institutional framework. Restrictive reforms regarding the wearing of full-face cover – the burqa – were not framed as an issue of religious freedom and equal treatment in Dutch debates. Instead, far-Right parties were able to get these reforms passed by framing them as an issue of cultural defiance, security and social cohesion.

This understanding of Dutch nationality and belonging also sheds a light on the selective nature of Dutch civic integration abroad policies. The Dutch government, when setting out the grounds for its policy proposal, explicitly described certain groups of family migrants as 'unfit' for Dutch society: "*An important part of these [family migrants] has characteristics that are adverse to a good integration into Dutch society. Most prominent among these (…) is the group of marriage migrants from Turkey and Morocco*".[28] While citizenship is seen as a property that can be acquired in France, in the Netherlands the properties of migrants tend to be seen as determined by their membership in a specific ethnic group – a subset with a static and coherent backward culture. While the French have confidence in state institutions' capacity to 'create' French citizens (with French colonialism representing an extreme form of cultural imperialism), the Dutch are inclined to see group differences as lasting and irremediable. If difference is considered 'sticky', ethnic group boundaries are conceived as impermeable, and 'Dutchness' is based on shared cultural codes, then it makes sense to design

28 TK 29700 (3): 2-4, 21 July 2004.

the Dutch civic integration abroad program to deny entry to those unable or unwilling to adapt to the Dutch ways.

Thus, we find great explanatory power in 'national models' defined as historically rooted conceptions of nationhood, polity and belonging that shape policy making processes. This type of analysis is similar in certain ways to the approach adopted by Brubaker (1992) for explaining the differences between German and French citizenship policies. However, Brubaker has been rightly criticised for offering an overly deterministic account. To avoid the pitfall of teleological explanations, we have to take into account the political and institutional context in which policy making occurs. Conceptions of nationhood, polity and belonging enable and constrain the social construction of policy problems, but do not determine the outcome of this process. Instead, we must look at the interactions between actors, who are situated in different (and changing) relations of power and who must negotiate with their institutional environment when pushing for certain policy frames. In other words, if conceptions of nationhood are the raw material, agency and institutions are the mould that effectively shapes policies. Therefore, in the next section, we look into how the policy making process was shaped and constrained by the dynamics of party-politics on the one hand, and legal norms and jurisprudence on the other.

4. Contextualising the policy making process: party politics and judicial constraints

Party politics

A growing strand of academic literature examines the positions adopted by political parties and the power relations between them, as a means of accounting for differences between national migration and integration policies (Cf. Bale, 2008a; Perlmutter, 1996).

The debates and reforms studied here took place predominantly when the Right or centre-Right was in power. In all of the restrictive reforms, the Right played a key agenda-setting role: either as an opposition party, or as member of a government. However, it is crucial to note that the two most influential restrictive reforms among our four cases – the prohibition of religious signs in schools in France, and the civic integration abroad program in the Netherlands – were both adopted with the support of major left-wing opposition parties. One of the parliamentary legislative proposals for the French Law on Secularism was introduced by the Socialist party, and the governmental proposal eventually presented to Parliament was adopted with the support of all left-wing parties except the Communists. Similarly, the proposal for a Law on Civic Integration Abroad found very broad support in the Dutch Parliament. The only parties to vote against the law were the Greens and the Socialist Party; the latter withheld their support because they were not convinced of the trustworthiness of the technology and method of examination. Only the Greens rejected the legislative proposal on principled grounds. By contrast, the French Left fiercely opposed the introduction of civic integration abroad, while the Dutch Left and Liberal Democrats rejected the proposal to ban the burqa.

Thus, these cases suggest that a broad political consensus on matters of integration – one that transcends the Left-Right opposition – is conducive to far-reaching policy reforms. In cases where the left-wing opposition raised objections, the policy outcome seems to have been tempered, even if the governmental majority did not need the opposition's support to adopt the proposals. Because of this, the shifting policy preferences of the political Left seem pertinent to our understanding of shifts over time in policy responses. Why did left-wing parties shift their views towards those held by the Right in recent years, on the subject of the headscarf in France, and of civic integration abroad in the Netherlands?

The electoral successes of the far-Right played an important role in the matter. It is broadly accepted – even perceived as "common wisdom" (Bale, 2008b: 457) – among migration scholars that electoral successes achieved by the far-Right may decisively influence policies, even if these parties don't enter government, because mainstream parties adapt their positions to regain their voters' favour (Cf. Schain, 2006: 287). Our analysis partly corroborates this thesis. In both countries, the far-Right enjoyed unprecedented electoral successes in 2002, with Pim Fortuyn's LPF winning landslide victories in local and national elections in the Netherlands, and Le Pen defeating the left-wing candidate Jospin in the first round of the presidential elections in France in 2002. The pressure the Left felt to revise its views on issues of immigrant integration would seem to explain the Socialists' support for the prohibition of the headscarf in public schools in France, as well as for the civic integration abroad exam in the Netherlands. In both countries, the Left felt a need to draw clearer boundaries to tolerance, setting a new norm through laws that, to varying degrees, curtailed the expression of cultural and religious differences.

This does not explain, however, why electoral pressure from anti-immigrant parties did not bring the French Left to endorse civic integration abroad, or cause the Dutch Left to support restrictions on the burqa. Indeed, in the Netherlands, the paradox is broader: when it comes to the donning of the headscarf in school, neither the Left nor the mainstream Right have significantly changed their position, in spite of the far-Right's attempts to problematize the issue. In our view, these stable policy preferences must be situated in the context of historic struggles over the nation and the citizenry, which are reflected in the party system itself. While Christian (Democrat) parties never took root in the French political system, they enjoy a strong position in Dutch politics. Here, they managed to forge several compromises regarding the place of religion in the public school system – something French religious forces could only achieve for (state-funded) private schools. Due to this particular pacification

and institutionalisation of religious conflicts, certain frames prove more resonant in the Dutch political arena than in the French one – such as the ideas that equality requires plurality, and that Muslims therefore have an equal right to outwardly express their religion in public schools. Conversely, both the Left and the Right in France have expressed the belief that Islamic covering have no place in public schools, and that the State has a responsibility to protect young women from religious group pressure. The Socialist Party's change of position in recent years pertains to the means – constraint instead of persuasion – rather than to the goal to be achieved. Civic integration abroad, on the other hand, has proven unacceptable to the Left, in large part because it was incompatible with their vision of the responsibility of the state in enabling migrants to become part of French society.

Thus, by shaping the discursive boundaries that define what is deemed just and justifiable, conceptions of nationhood, polity and belonging play an important role in shaping consensus and dissent among political actors, whose political power subsequently determines their capacity to push for certain frames. This political positioning in turn affects the impact of judicial constraints on policy outcomes.

Judicial constraints

Judicial constraints moderated the outcome of French debates over civic integration abroad. In France, the "right to a normal family life" is considered a "*principe général du droit*" – the equivalent of a constitutional right, protected as such by the Constitutional Court (GISTI, 2002). During the parliamentary debates, UMP deputies presented amendments that would have made the French civic integration abroad policy much more similar to the Dutch: they proposed that admission be made conditional on passing the test, rather than on merely participating in the evaluation and the course, and that applicants be charged for the costs of

the evaluation and course.[29] The government advised against the adoption of these amendments, however, warning that "*the Constitutional Court would most certainly censor a provision that would thus infringe upon the right to family reunification"*. The amendments were subsequently withdrawn.[30] A comparable constitutional protection of family life does not exist in the Netherlands. Dutch courts, in family reunification cases, refer to article 8 of the European Convention on Human Rights (ECHR, 1951), which guarantees the right to family life.[31] Article 8, as interpreted by the European Court of Human Rights in Strasbourg, obliges states to strike a fair balance between the interests of individuals in living with their families, and the general interest of the host society (Van Walsum, 2004). The Dutch government did not consider either requiring candidates to pass a test, or the exam fees, or the lack of state involvement in providing courses and learning material, to be an infringement upon Article 8. The weight of the interests at stake for Dutch society, it was argued, justified this limitation of individuals' right to family life.[32] In its advice to the government about the legislative proposal, issued prior to the parliamentary debates, the Council of State concurred with this view.[33] It appears that the French constitutional protection of family life sets higher standards for the right to family reunification than the jurisprudence of the European Court in Strasbourg does.

Aside from the question of the comparative strength of judicial review, however, there is also the question of how politicians deal with the scrutiny of the courts. Since neither the Court in Strasbourg nor the French Constitutional Council has yet made a pronouncement on integration requirements abroad for family migrants, the French and Dutch governments have been left to assess the admissibility of their reform proposals on their own, based on existing

29 AN, Amendement No 64, 14 September 2007; AN, Amendement No 84, 17 September 2007; AN, Amendement No 70, 17 September 2007; AN, Amendement No 83, 17 September 2007.
30 AN, plenary debate 19 September 2007.
31 In recent years, the EU Directive on family reunification of 2003 has also come to play a role, but jurisprudence based on the directive is still limited.
32 TK 29700 (3): 17, 21 July 2004; TK 29700 (6): 47-48, 6 December 2004.
33 TK 29700 (4): 6, 13 April 2004.

jurisprudence. Naturally, they could not predict the line that the courts would adopt with certainty. In this regard, it is striking that the Dutch government chose to "seek out the limits of the ECHR", as minister Verdonk put it,[34] consciously taking the risk that the new policy would meet with judicial disapproval. The French government, by contrast, chose to steer clear of judicial grey areas. The Dutch boldness and French prudence in anticipating judicial review are likely related to the very strong political support for the government proposals in the Netherlands – a support that stands in contrast to the contentiousness of the reform in France. As we have suggested previously, this political positioning is shaped in turn by conceptions of nationhood, polity, and belonging.

The French government likewise dealt boldly with judicial constraints when it came to regulating the donning of the headscarf in school – a reform that received very broad political support. French policy makers used the margin of appreciation allowed by the Court in Strasbourg – which the Dutch used to implement an integration test abroad – to push for a Law on Secularism reconfirming *laicité* as an ethical norm. The ECHR had stipulated in several cases[35] that the right to freedom of religion was not absolute and, moreover, needed to be interpreted with *"a recognition of the traditions of each country, without seeking to impose a uniform model of the relation between church and state"*. By constantly referring to *laicité* as a particular national tradition of safeguarding social cohesion, the French found a way to balance international protected religious freedom rights with the general interest of public order (Thomas, 2006: 255). Furthermore, by banning 'ostensible' rather than 'visible' religious signs (as had been the formulation in the proposal of the Debré parliamentary commission and the Socialist Party), the government circumvented the jurisprudence of the French Council of State. Since 1989, its opinion had been that a general ban infringed upon

[34] TK 29700 plenary debate: 4021, 22 March 2005.

35 Karaduman vs Turkey (1993), Dahlab vs Switzerland (2001) Shahin vs Turkey (2004, 2005). See Vakulenko (2007).

the right to religious freedom protected by French and international law, including the ECHR, and that girls could only be expelled on a case by case basis (Mc Goldrick, 2006: 69).

In the Netherlands, the parliamentary motion to impose a general ban on the burqa eventually resulted in a very moderate and much-weakened legislative proposal, owing to the negative advice of both a legal expertise committee[36] and the Council of State. The fact that the advice of a committee was requested in the first place was the result of weak political support for the general ban – not only from the left-wing opposition but also the Liberal Democrat coalition party. In their advice, both the committee and the Council argued that such a ban was not feasible, since it would discriminate against people on grounds of their religious and ethnic backgrounds. They referred not only to the ECHR, but also to the Dutch Constitution and to the Dutch equal treatment act, which in turn incorporates the EU Directives on discrimination of 2004. EU law presents a 'harder' constraint than the ECHR, since the EU Court of Justice in Luxembourg is less reluctant than the Court in Strasbourg to interfere with national policy making. The government's current law-proposal includes adjustments to the initial motion, meant to fit equality legislation by banning all types of face covers, including balaclavas, as well as by restricting the scope of the ban to schools only. Some parties' desire to draw boundaries to what were considered 'excesses of Islam' was curtailed by the Council of State and legal expertise.[37]

6. Conclusion

There is great capacity for explaining policies in'national models', defined as historically rooted, path-dependent conceptions of nationhood, polity, and belonging. We have shown how policies regarding the Islamic headscarf in the institutional domain of education have

[36] TK 29754 (91) Appendix.

[37] At the time of writing this article, the new Dutch minority coalition government (that relies on the the support of the Freedom party) announced its plans to implement a full ban on face-covers in public space in 2011. This will depend on whether the law-proposal, which must still be drafted and accepted by a parliamentary majority, will pass the legal scrutiny of the Senate.

been shaped, to a large extent, by nation-specific traditions of laicité and Republicanism in France, and pillarization and pluralism in the Netherlands. The introduction of civic integration abroad also seems influenced by distinct conceptions of citizenship: while the French rely on the capacity of state institutions to turn any foreigner into a French citizen – and thus require only participation in a course – the Dutch tend to consider minorities' group membership and the cultural characteristics associated with ethnicity as essential and irremediable, and have opted for a selective test that allows them to deny entry to foreigners with 'problematic' characteristics.

However, an analysis based exclusively on such abstract conceptions is inherently incomplete, and almost inevitably deterministic and teleological. Indeed, the concrete impact of conceptions of nationhood, citizenship, and belonging on policy outcomes is determined by the political and institutional context in which decision-making takes place. Party politics play a crucial role, in that consensus across the Left-Right divide is conducive to extensive reform. The positioning of political parties on the migration issue is influenced by the electoral successes of far-Right parties, but also by historic cleavages around religion and the nation, and therefore differs from one policy domain to the other in the two countries. Such political dissent or consensus in turn affects judicial constraints, which may play a significant role, particularly when domestic or EU law and jurisprudence are at stake, while political support for reform is relatively weak. By contrast, when a broad parliamentary majority supports a proposal, our case studies suggest that radical reforms can be achieved even in the face of judicial objections. This is especially clear in cases where these objections are based on the European Convention of Human Rights and its Court in Strasbourg, which tends to be reluctant to encroach upon national governments' sovereignty in regard to religious and family matters.

Our analysis of parliamentary debates on the headscarf and on civic integration abroad in France and the Netherlands suggests that country-specific conceptions of nationhood, citizenship and belonging shape political deliberations in the field of migrant incorporation. How, and to what extent such conceptions play a role depends, however, on the ways in which a particular issue is framed – which in turn depends on the interactions between political parties and the power relations between them, as well as on judicial constraints that are brought to bear on the decision-making. In sum, national models matter because they enable actors to frame certain issues as policy problems and to discredit other understandings of the same issue, subsequently pushing policy deliberations in a country-specific direction. Nonetheless, in order to understand when and how they matter we must carefully analyse the political and institutional context in which each framing contest and decision-making process takes place.

References

Asad, T. (2006). French secularism and the 'Islamic veil affair'. *The Hedgehog Review,* 8(1-2), 93-107.

Bale, T. (2008a). Turning round the telescope. Centre-right parties and immigration and integration policy in Europe. *Journal of European Public Policy,* 15(3), 315-330.

Bale, T. (2008b). Politics matter: a conclusion. *Journal of European Public Policy,* 15(3), 453-464.

Benford, R., & Snow, D. (2000). Framing Processes and Social Movements: an Overview and Assessment. *Annual Review of Sociology, 26,* 611-639.

Bowen, J. R. (2007). *Why the French don't like Headscarves. Islam, the State, and the Public Space*. Princeton and Oxford: Princeton University Press.

Brubaker, R. (1992). *Citizenship and nationhood in France and Germany*. Cambridge: Harvard University Press.

Castles, S. (1995). How Nation-States Respond to Immigration and Ethnic Diversity. *New Community*, 21(3), 293-308.

Entzinger, H. (2005). Changing the rules while the game is on; From multiculturalism to assimilation in the Netherlands. In M. Bodemann & G. Yurdakul (eds.), *Migration, Citizenship, Ethnos: Incorporation Regimes in Germany, Western Europe and North America*, (pp. 121-145). New York: Palgrave MacMillan.

Favell, A. (1998). *Philosophies of integration : immigration and the idea of citizenship in France and Britain*. Basingstoke / New York: Macmillan / St. Martin's Press.

Fetzer, J. S., & Soper, C. (2005). *Muslims and the State in Britain, France, and Germany*. Cambridge: Cambridge University Press.

Ghorashi, H. (2006). *Paradoxen van culturele erkenning. Management van Diversiteit in Nieuw Nederland*. Inaugural address. Faculty of Social Sciences, Vrije Universiteit Amsterdam.

GISTI (2002). 'Immigration: trente ans de combat par le droit. Les « grands arrêts » du Gisti. Pas de vie familiale sans droit au travail'. *Plein Droit*, (53-54). Available online on : http://www.gisti.org/doc/plein-droit/53-54/j2.html.

Joppke, C. (2007). Beyond National Models: Civic Integration Policies for Immigrants in Western Europe. *West European politics*, 30(1), 1-22.

Koenig, M. (2003). Incorporating Muslim Migrants in Western Nation States. A comparison of the United Kingdom, France, and Germany. *Journal of Ethnic and Migration Studies*, 6(2), 219-234.

Koenig, M. (2007). Europeanising the Governance of Religious Diversity: An Institutionalist Account of Muslim Struggles for Public Recognistion. *Journal of Ethnic and Migration Studies,* 33(6), 911-932.

Koopmans, R., Statham, P., Giugni, M., & Passy, F. (2005). *Contested Citizenship. Immigration and Cultural Diversity in Europe*. London, Minneapolis: University of Minnesota Press.

Lettinga, D. (2011). *Framing the hijab. The governance of intersecting religious, ethnic and gender differences in France, the Netherlands and Germany*. PhD Thesis Vrije Universiteit Amsterdam. Ridderkerk: Ridderprint Offsetdrukkerij.

McGoldrick, D. (2006). *Human Rights and Religion: The Islamic Headscarf Debate in Europe*. Portland: Hart Publishing.

Modood, T., & Kastoryano, R. (2006). Secularism and the accomodation of Muslims in Europe. In A. Triandafyllidou, R. Zapata- Barrero & T. Modood (eds.), *Multiculturalism, Muslims and citizenship. A European approach* (pp. 162-178). New York: Routledge.

Perlmutter, T. (1996). Bringing Parties Back In: Comments on 'Modes of Immigration Politics in Liberal Democrat Societies. *International Migration Review,* 30(1), 375-388.

Schain, M. A. (2006). The extreme-right and immigration policy making: Measuring direct and indirect effects. *West European politics,* 29(2), 270 – 289.

Scott, J. (2007). *The Politics of the Veil*. Princeton & Oxford: Princeton University Press.

Sniderman, P. M., & Hagendoorn, L. (2007). *When ways of life collide: multiculturalism and its discontents in the Netherlands*. Princeton: Princeton University Press.

Stone, D. A. (1989). Causal Stories and the Formation of Policy Agendas. *Political Science Quarterly, 104*(2), 281-300.

Thomas, E. R. (2006). Keeping Identity at a distance: Explaining France's new legal restrictions on the Islamic headscarf. *Ethnic and Racial Studies,* 29 (2), 237-259.

Vakulenko, A. (2007). ‘Islamic Headscarves’ and the European Convention On Human Rights: an Intersectional Perspective. *Social & Legal Studies*, 16(2), 183-199.

Verloo, M. (2005). Mainstreaming gender equality in Europe. A critical frame analysis approach. *The Greek review of Social Research, 117 B*(Special Issue), 11-34.

Walsum, S. van (2004). Recente ontwikkelingen – Vreemdelingenrecht en gezinsleven. Deel I: Internationaal recht. *Migrantenrecht*, 19(4), 136-146.