

Muslims in Global Societies Series

Melanie Adrian

Religious Freedom at Risk

The EU, French Schools, and Why the
Veil was Banned

 Springer

Muslims in Global Societies Series

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*Dedicated to the memory of two trailblazers:
Professor Werner K. Adrian
Professor Kevin Boyle*

Foreword

With this book, Melanie Adrian makes an extremely valuable contribution in at least two ways.

First, she illuminates afresh a much-discussed subject — controversies over two recent French laws, one banning Muslim headscarves in schools (2004) and the other prohibiting Muslim women from wearing facial coverings in public (2011) — by becoming what used to be called a “participant observer” but what one anthropologist now better describes as an “observing participant.” Without eliminating sensitivity to cultural variation, such an approach modifies “the idea of cultural relativity with notions of universal human values and human rights in increasingly more areas of inquiry.”¹

Adrian spent 2005-2006 teaching English at a public school in Dammarie-les-Lys, a *cit * or residential area for foreign workers mainly from Muslim countries, located some forty-five minutes south of Paris. As is typical of France, the school was divided into academic and vocational sections, and since most vocational students are Muslim, she elected to teach them. She also lived near the school and developed close relations with Muslim women in the area. Her book compellingly interweaves observations based on her experience, including the results of extensive interviews of students, teachers and residents, with broader reflections drawn from scholarly literature, all focused on the debates over the legal restriction of Muslim female garb.

What distinguishes her book as a clear example of “observing participation” is that she places the debates in the context of human rights jurisprudence concerning the right to religious freedom and, what is more, she herself takes a strong position on the subject. She argues that a proper understanding of the international human right to religious freedom would lead to overruling or severely modifying the two French laws and instead would accommodate within very narrow limits a reasonable claim by Muslims in favor of a right to manifest their religion in public on grounds of conscience.

¹ (Seneviratne 1999) P. 6.

The French Courts, backed up by the European Court of Human Rights, have, according to Adrian, permitted the government too much discretion — known as a “margin of appreciation” — in ruling that public exhibition of headscarves and face coverings by a few thousand Muslim females constitutes a severe threat to public order. On careful inspection, the government’s claims do not hold up, in large part for having disregarded the kind of informed Muslim testimony Adrian supplies. The dominant French idea of *laïcité*, sometimes translated as “secularism,” serves to discourage all public expression of religion because of its anticlerical origins. The dubious assumption is that any public display of religion will open the door to religious repression characteristic of prerevolutionary France.

Based on her research, revealing personal experience and a thoughtful elucidation of human rights jurisprudence, Melanie Adrian has become an ardent and, in my view, persuasive advocate for the religious rights of the Muslim minority in France.

Second, Adrian gives good reasons to question conspicuous criticisms of a human rights approach to subjects like this. It is true that Talal Asad, for one, calls French society to account for demanding that immigrants assimilate completely, that they stop defining themselves “in terms they regard as essential,” and “shed narratives and practices they take to be necessary to their lives as Muslims.”² In this, Adrian and Asad see eye to eye. But Asad is not a friend of human rights. He does not attempt, as Adrian does, to rectify the plight of French Muslims by invoking such standards, since human rights for him are but an expression of dominance and repression, symbolizing the “violence of universal reasoning itself.”³ They are nothing more than “floating signifiers that can be attached to or detached from various subjects and classes by the market principle and designated by the most powerful nation-states.”⁴

Others agree. A follower of Asad’s, Winnifred Sullivan, carries things further. She speaks of the “impossibility of religious freedom” in a book by that name, meaning the incoherence and impracticability of endeavoring to protect religious freedom legally. Accordingly, she questions whether “it is possible to find any ground for the critique of law outside of legal systems controlled by nations and therefore subject to political manipulation...”⁵ Coming to similar conclusions, Samuel Moyn in *The Last Utopia: Human Rights in History* argues that human rights language is essentially utopian or illusory. It has no coherence or practical utility of its own and cannot provide a standard of criticism independent of national legal systems.⁶

² (Asad 2003) P. 175.

³ (Asad 2003) P. 59.

⁴ (Asad 2003) P. 158.

⁵ (Sullivan 2005) P. 156-157.

⁶ (Moyn 2010).

Adrian's method and findings sharply oppose such conclusions. Unlike these authors, she looks at a concrete issue in detail and in the light of a perceptive grasp of human rights standards and jurisprudence. Moreover, she shows persuasively that while human rights language, like all constitutional language, is not self-interpreting, some interpretations are better than others. As she makes clear, the human right to "freedom of conscience, religion or belief" is properly understood rather expansively. It permits assent to religious or other conscientious beliefs without restraint and allows limits on the "manifestation" or practice of those beliefs only when the limits are prescribed by law and impose the least restrictive burden consistent with protecting a truly compelling state interest, namely, public health, safety or order.⁷ That language places a considerable *onus probandi* on the government.

Such language is subject to reasonable disagreement but only around the edges. There can be no disagreement that widespread epidemics threaten public health, that insurgencies or civil wars threaten public safety. By the same token, public order is obviously endangered by major, large-scale events that would disrupt a nation's entire way of life, like the failure of national banks. The key question is how similar are purported threats to events of that kind, and claims that they must be supported by a very high standard of evidence. If Adrian is right that no such evidence was presented when the laws restricting Muslim female garb were passed in 2004 and 2011, then the laws must be changed.

Adrian appears, after all, to have found independent grounds for challenging national laws as well as the rulings of international courts that sometimes unjustifiably sustain those laws. She has found the grounds by means of a thoughtful and rigorous reading of international human rights standards. Far from rubber stamping "legal systems controlled by nations and therefore subject to political manipulation," human rights standards, as Adrian interprets them, work out in this case to favor not the French government but the Muslim minority in France. The standards thereby accomplish what they were designed to do: restrain governmental power in accord with the legitimate rights of citizens.

Melanie Adrian's fine book does not answer all possible objections to a human rights approach to the freedom of religion, but it represents a big step in the right direction. As such, it exemplifies an exciting new form of anthropological research, "observing participation," or cultural analysis accented by human rights advocacy.

David Little

⁷International Covenant of Civil and Political Rights, Article 18, paragraph 3. (I leave out the reference to "public morals" since, to my knowledge, the term has not been subject to judicial interpretation.) Cf. Human Rights Committee, General Comment No. 22(48) (Article 18), paragraph 8 in (Stahnke and Martin 1998) P. 93-94.

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