
Behind the Veil:

A Critical Analysis of European Veiling Laws¹

By Neville Cox

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Reviewed by Şerif Onur Bahçecik, Middle East Technical University

The religious rights of Muslims living in Europe is increasingly attracting the attention of scholars from various disciplines. *Behind the Veil* deepens the literature with its specific focus on the question of veiling and the way it is approached in European legislation and through the jurisprudence of the European Court of Human Rights (ECHR). The main argument of the book is that while the “primary reason for voluntarily wearing” the veil is “religious” (p. 35). European laws ban face veils by citing concerns about terrorism and threats against gender equality, open society and the rights of others. Cox emphasizes that these laws and their justifications are not consistent with the European human rights regime. He further “speculates” that the real reasons (hence the title of the book) for the ban are an attempt to respond to the ideological challenge of Islam and to reaffirm Europe’s moral high ground in a time of anxiety.

European anti-veiling laws and the Court’s approval of this legislation are based on the erroneous assumption that the veil has a single inherent meaning. After an expert but brief discussion of the place of the veil in Islamic law and the different rationales for veiling, Cox points out that while the question of whether specific forms of veiling are required by Islamic law cannot be conclusively answered, evidence shows that women wear the veil with religious motivations. This is a



significant point for Cox since it demonstrates the “non-choice” (p. 34) that Muslim women in Europe are facing. When confronted with European anti-veiling laws, Muslim women have to make a choice between obeying what they see as the command of God and being excluded from education, employ-

ment and sometimes the entire public sphere. This means that not only are anti-veiling laws significantly different from other instances of sartorial regulation, but also that these laws lead Muslims into a fundamental dilemma. This point loses some of its rigor in places where the author relies on analogies in his argumentation. For instance, in Chapter 5 when Cox discusses whether veiling is a consequence of community pressure, he argues that some Muslim women may have been veiling due to societal influences just as European women adopt fashionable items through a similar mechanism. This comparison between the veil and fashion detracts from the strength of Cox’s emphasis on the unique dilemmas that anti-veiling laws impose on Muslim women in Europe.

A central chapter of Cox’s book is Chapter 3 on veiling and rights. Many scholars and NGOs that work on the rights of Muslims in Europe approach veiling from a secular human rights perspective and see anti-veiling laws primarily as violations of the freedom of religion. Cox, however, argues that the rights

to freedom of expression and privacy are also relevant to the question of veiling. Building on his previous point that women may have cultural, political and personal (besides primarily religious) reasons for veiling, Cox notes that these different rationales for veiling make it a subject of freedom of expression as well. The veil may communicate messages to the public and this expression has to come under the protection of the ECHR since the freedom to “shock, offend and disturb” is part of the jurisprudence of the Convention. Cox further argues that the right to privacy has to be understood beyond its secular meaning of autonomy and in this context should extend to the freedom to dress. In its religious meaning, privacy includes the understanding that there are certain parts of the body that should be kept private and not be exposed to the public. For some Muslim women these include the face and the hair; therefore, “the privacy claim in this situation... is not about freedom to do something, it is about freedom *from* the positive demands that the state is making” (p. 60). According to Cox, this may be difficult for secular human rights experts to appreciate when religious experience is understood as something equivalent to other forms political expression and ideologies. This problem is exacerbated by the fact that the predominant understanding of religion in Europe is based on liberal Protestantism. This belief system is based on the notion of individual conscience and focuses on the internal experience of belief, whereas Islam is based on the collective and emphasizes externally visible actions (orthopraxy).

Another significant claim is that the ECHR has a policy of deference to state policy in

cases involving freedom of religion. The Court defers through four different tactics: First, the Court, even when it finds that there is a legitimate claim to violation of Article 9 of the Convention, has a very superficial attitude toward the freedom of religion. It does not realize that anti-veiling laws confront Muslim women with a non-choice. In that sense, the Court is less appreciative of the religious experience when compared to the UN Human Rights Committee. Second, the Court confines veiling to Article 9 and avoids consideration of veiling from the perspective of other rights such as freedom of expression. This is important not only because freedom of religion is less absolute but also because the Court considers the rights of others in deciding on cases of veiling. Third is the “inevitable” application (p. 68) of the margin of appreciation and fourth is the Court’s tendency not to require states to prove their statements about the negative impact of the veil.

Beyond the substance and the breadth of the argument, what makes this volume well worth reading is the incisive argumentative style of the author. Cox never briefly dismisses counter-claims but seeks to engage with them at length in a very transparent manner that clearly shows the steps in his reasoning, giving the reader a taste of Aristotelian rhetoric. As such, this volume is highly recommendable for those who are looking for an in-depth discussion of veiling laws in Europe.

Endnote

1. The eBook version is priced from £22/\$31 from Google Play, ebooks.com and other eBook vendors, while in print the book can be ordered from the Edward Elgar Publishing website.