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‘BURQA AVENGER’: LAW AND RELIGIOUS PRACTICES IN SECULAR SPACE

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ABSTRACT. The current debate over the *hijab* is often understood through the lens of a ‘clash of civilizations’ between a tolerant ‘secular’ ‘West’ and a chauvinist ‘religious’ ‘East’. The article argues that this polarization is the result of a specific secular semiotic understanding of religion and religious practices which is nowadays embedded in western law. In my analysis, secular’s normative assumptions, played around the control of women’s body and the definition of religious symbols in the public sphere, work as a marker of ‘citizenship’ and ‘racialized religious belonging’. Through women’s body, western/secular law creates a link between gender, religion, ethnicity and belonging which forms a specific law and religious subject. Thus, secularism emerges not as the separation between private and public, state and religion, but as the reconfiguration of religious practices and sensitivities in the public secular space through the control of the visible.

KEYWORDS. Gender; headscarf debate; power of images; secular/religious; semiotics; sovereignty; symbology; women in the Middle East.

I. INTRODUCTION

In recent years, the headscarf worn by women has been at the centre of many polemical debates in the west. Politicians, judges, journalists and columnists have even ‘over-debated’ the practice of veiling in the secular European public space, filling pages of journals and social media with stories of Muslim women who have been forbidden to work, to walk in a public place, to have appropriate education, and even to stand in a court room, because they were veiled. Dahlab (*Dahlab v Switzerland*), for instance, a teacher in a primary school in Switzerland, was dismissed and accused of proselytism because she started wearing the veil without telling her students that she had converted to Islam. Sahin (*Sahin v Turkey*), a young student at Istanbul University, was forbidden to take an examination because she was veiled and she was obliged to move to another country to obtain her university degree. Shabina (*Begum v Denbigh High School Governors*), a young British student, was expelled from school because she decided to wear a *jilbab* instead of a *shalwar kameez*, considered by three local *imams* to be the most appropriate attire for Muslim girls. The most recent event in this seemingly endless western obsession with women’s veils is the summer 2016’s ‘*burkini* ban’¹ (Jawad 2016) implemented by several mayors on the French Mediterranean Riviera. The ban was based on the assumption that the ‘swimwear ...does not “respect good customs and secularism”’ (Jawad 2016), it ‘threat[en] French identity’ (Shabi 2016), and it is a symbol of women’s oppression (Shabi 2016). The idea that the veil is a fixed symbol of Salafist proliferation, women’s oppression, and ‘backward’ and ‘anti-secular’ values, is central to western discourse about the headscarf as well as in legal decisions over the practice of

¹ The *burkini* is a swimwear used by some Muslim women which covers the whole body except for the face, hands and feet.

veiling, in which veiled Muslim women emerge as carriers of a single and monolithic essence, in contrast to western liberal secular values.²

To this fixed image of a veiled subjugated Muslim woman as presented by western judges, politicians and columnists, I juxtapose the pluralistic and ever-changing image of ‘Burqa Avenger’: the super-heroine of a new Pakistani animated television series which is becoming so famous that it will soon also be broadcasted in India. The series offers a different understanding of veiled Muslim women by challenging the western universal(ist) understanding of bodily practices, women’s freedom and their possibility of agency. In the series, Jiya, an unveiled teacher in a girls’ primary school, battles in defence of women’s rights by ‘transforming’ herself into her *alter ego*, ‘Burqa Avenger’: a super-heroine who wears the *burqa* to conceal her identity while using ‘Takht Kanaddi’, a special martial art involving books and pens, to struggle against the enemy (Mukhtar 2015; Rao 2015). ‘Burqa Avenger’ is an interesting character, not only because the *burqa* empowers her (as it is exactly *through* her *burqa* that Jiya acquires the possibility of agency as she can hide her identity and fly), but also, more importantly, because she reveals a different and ever-changing way to live and inhabit different bodily practices. In contrast to western stereotypes, which see Muslim women as subjugated to a set of norms/commandments based on general (supposedly chauvinist) religious beliefs, Jiya wears the *burqa* when she needs and wants to: in other words, through an ever-changing ‘use of her body’ she discloses an understanding of bodily practices that is not only conceptual but affective/performative (Rappaport 1999).

² It is worth noting that while in the last two centuries the meaning of the veil as a ‘sign of’ Muslim women’s oppression remained unchanged in Western culture, in Muslimmajority societies veiling is an immanent and performative ever-changing phenomenon which takes different meanings, colours and forms in different cultural and historical contexts (Ahmed 1992; Sedgwick 2006; Mernissi 1991; El Guindi 1999; Bodman and Tohidi 1998).

The juxtaposition between the image of a woman subjugated by a chauvinist society that physically constrains her body, as presented in the western discourse, with that of ‘Burqa Avenger’ indicates that particular attention should be paid to the semiotic of signs and how it works in the modern western/secular/liberal public space.

I argue that western semiotic ideology, which gives to images and signs a fixed meaning arbitrarily defined by social convention or by law, does not take into consideration the ‘affective and embodied practices through which a subject comes to relate to a particular sign’ (Mahmood 2009, pp, 841–42) and naturalizes and defines the religious subject as an individual who simply submits him/herself to a set of recommendations based on general beliefs: in other words, secularism conceives religion as a simple belief, and so as a matter of personal choice. This understanding is strictly linked to the place of religions within the secular state and to the role of the law in regulating ‘visible’ religious practices, such as the veil, in the public space. In this sense, secularism is not understood as the mere separation between temporal and spiritual power, but as the re-conceptualization of religious sensitivities and religious practices in the modern world (Mahmood 2009; Asad 2003): thus, while secular thought has come to define concepts of state, economy, religion and law, it simultaneously creates a specific law and religious subject through the control of the visible in the public space.

In what follows I consider this issue through the lens of the passionate debate that has developed in the last few years around European legal decisions concerning the practice of veiling; these rely on the assumption that veiling is a symbol ‘*irreconcilable* with the principle of gender equality’ and thus ‘*incompatible* with Western democratic values’.

I will draw on Mahmood’s study (2005; 2012a) of ‘pious women’ to argue that non-liberal traditions have developed different understandings of religion and bodily practices: if, on the one hand, secular rationality defines religion (and religious signs/practices) as a

‘private matter’, then on the other ‘pietist women’ disclose a performative/affective understanding of (religious) bodily practices.³ Mahmood’s analysis is of particular interest, as

³ Critiques of Mahmood’s work point out that, through her empiricism in defining how different cultures experience life, she falls into the same essentialism that she tries to avoid (Waggoner 2005; Ismail 2007). For Bangstad (2011), for instance, the problem of Mahmood’s analysis is that she places pious women in Cairo as the embodiment of a ‘radical alterity’ creating a binary (essentialised) opposition between ‘pious women’ and the ‘western/liberal’ self. He argues that Mahmood falls into a kind of ‘religio-centrism’ and cultural relativism as her anthropological analysis is limited to women in the mosque and does not take into consideration the emergence of Egyptian Salafism, failing, in this way, to historicise the practice of pious women in Egypt. In this light, Jacobsen (2011) points out that in the Norwegian context ‘piety’ is not in opposition to the secular/liberal model; rather, the subjectivity of ‘pious’ Muslim women in Norway is shaped by the intersection of different concept of the self. Similarly, Butler (2013) argues that Mahmood moves within a monolithic (secular) normative framework which creates a tension between ‘on the one hand, a presumptively secular framework tied to an ontology of the subject as self-owned and, on the other hand, a nonsecular framework that offers an ontology of the subject as dispossessed in transcendence’ (p. 119): this, in turn, assumes a generalized secular ontology of the subject. Although I agree with Butler that secularism is not monolithic in its ontology, what I found particularly interesting in Mahmood’s (2013) work is that she detects certain (secular) ‘modular arrangements and practices that have come to be identified with modern secularity (such as the ideological separation of church and state or privatization of religion) that give secularism a certain coherence and structure’ (pp. 146–47). As a matter of fact, all European legal decisions over the practice of veiling rely on the same assumptions. In my analysis, Mahmood’s work is particularly relevant as, as I shall argue, the regulation of the headscarf in Europe emerges through a specific normative definition of religion and the ‘proper’ form of religiosity in the public sphere. Drawing on Jacobsen (2011) and Jouili (2011), who problematize liberal/secular assumptions without reducing ‘pious women’ as ‘the other’ from liberalism, I argue that Islam is a discursive tradition (Asad 1986; Mahmood 2013) intertwined with many (contextual) factors and its discursive power changes based on specific contexts and power relations. Through Mahmood’s analysis, I do not want to dismiss semiotic processes or essentialise (or binaryze) the category of secular and religious (or ‘pious’ and ‘western/liberal’ values), but to explore practices that do not fall in the western/secular semiotic ideology of understanding of ‘sings’ not in term of opposition but in terms of ‘difference’. In my analysis I use Mahmood’s

it reveals that what is often ignored is the way in which liberal/secular thought defines and universalizes a specific Christian/liberal/secular⁴ rationale based on very specific concepts of religion and, along with it, of women's agency and freedom (Hirschmann 2009; Vakulenko 2012).⁵ I argue that these universal(ist) concepts are expressed in the juridical regulation of women's bodies, which reveals the inadequacy of western universal(ist) discourse over the notion of bodily practice, and women's freedom and agency within non-liberal pluralistic contexts: by taking into consideration only a very liberal/secular understanding of religious practices and women's freedom and agency, not only do European judges exclude different concepts of freedom and agency and different forms of 'humanity' (Esmeir 2012), but they also bring private sentiments into the public sphere. In the case, by defining the veil as a fixed 'religious symbol' in contrast to liberal values of gender equality, the secular state defines the

work to show veiling as a 'speech-act' that perform different work on the creation of the 'modern' religious subject: in showing that, I suggest that secular/liberal normative assumptions are inadequate when applied to different discursive traditions. In essence, while trying to avoid essentialisation, I use Mahmood's work to show how verbal and non-verbal practices cannot always be understood through western theory of representation and semiotic. I also draw on Rappaport (1999) who argues that cultural order is not static; rather, it continuously changes through the performative repetition of fixed rituals by individuals who, by giving a different significance to it, render the cultural order 'fluent'. For him the 'ultimate postulate' is nothing else but signifier without signified. These signifiers are transmitted through 'fixed ritual practices' to which the individual gives different significance based on his/her personal concerns.

⁴ I have chosen to use this term because I see a continuation between Christianity and secular (see Kantorowicz 1957; Diamantides 2012). I also draw on Asad (2006a) for whom 'the ideological roots of modern secularism lie in Christian universalism' (p. 516) and Merz (2015) who argues that notions of religious and secular should be applied in order to discuss their dynamic relationship.

⁵ As Vakulenko (2012) argues, western feminist 'has been successful in making (a certain understanding of) gender equality an unconditional normative value against which all gender practices, including Islamic veiling, are to be assessed' (p. 13).

proper place of religion and religious practices in the ‘modern world’. In fact, it is exactly the act of defining veiling as a ‘sign’, a ‘symbol’ of something intrinsically ‘other’, that allows the marginalization of Islamic culture in the liberal/secular public sphere. Whereas Christian symbols can be displayed as carriers of democratic values, Islamic symbols have been banned because they are (supposedly) ‘un-democratic’.⁶

By defining veiling as a ‘sign’, a fixed symbol of a monolithic culture in contrast to western secular democratic values, European courts imply a duality between signifier and signified and ‘naturalize’ women’s desires as something ‘neutral’ to be defined by the state through an ‘exercise of sovereignty’ (Asad 2006a): in fact, it is the sovereign that decides which symbols are to be regarded as ‘religious’ and, by so doing, it ‘legitimizes’ a specific concept of religion and the religious subject while legitimizing, at the same time, its character of absolute representative of a people. Drawing from McClure (1990), I argue that it is exactly the secular separation between private and public, *forum internum* and *forum externum*, signifier and signified, and faith and its manifestation, that allow the sovereign to be the only rightful power to regulate the civil domain and so to impose limitations to certain (non-Christian) religious practices. In my analysis secularism emerges as the reconfiguration of religious practices and sensitivities in the public sphere: this, in turn, not only has the power to exclude different subjectivities, but it also shapes a ‘modern’ Christian/secular law’s subject through specific secular normative assumptions on religion and the religious subject which are, nowadays, embedded in western/secular/liberal law and mirrored in the so-called ‘*hijab* cases’. Thus, secular’s normative assumptions, played around the control of women’s body and the definition of symbols in the public sphere (Yuval-Davis 2006; Goodrich 1995),

⁶ As I shall argue, Jivraj (2013) sees in this contraposition between a ‘tolerant’ Christian and an ‘intolerant’ Islam a racialization of religion which favour Christian belief over others.

create a link between gender, ethnicity and belonging and work as a marker of ‘citizenship’ and a ‘racialized religious belonging’ (Jivraj 2013).

II. ON FREEDOM AND AGENCY: AN EAST/WEST PERSPECTIVE

In 2004, when Aheda Zanetti invented the *burqini*, it was to increase Muslim women’s agency by allowing them to enjoy sports and beach culture. However, fifteen mayors of French Riviera resorts decided to ban the *burqini* in the name of women’s agency and French secular values (Shabi 2016). Rudy Salles, Nice’s deputy mayor, defined the *burqini* as a ‘provocation from Islamists’, claiming that the ban aimed to liberate women while helping people ‘to be integrated [into] this society’ (Shabi 2016).

The ‘*burqini* ban’ sparked passionate debates on various social media, especially after the publication of a video in which four male French police asked a 34-year-old Muslim woman to undress on the beach while her young daughter cried and bystanders observed the scene (Al Jazeera 2016). The video and photos of the event, which filled pages of social media for weeks, sparked such controversy that Christian Estrosi, president of the Regional Council of Provence-Alpes-Côte d’Azur and deputy mayor of Nice, threatened to file a lawsuit against anyone who posted photos or videos of women wearing the *burqini* on Facebook or Twitter. Heedless of the rights of the woman who was asked to undress in front of the entire world, he stated that the publication of those photos ‘provoke[d] defamatory remarks and threats’ against police agents. He added that legal complaints had already been filed ‘to prosecute those who spread the photographs of our municipal police officers and those uttering threats against them on social networks’ (Toor 2016). The ‘*burqini* affair’ in France, which emerges within the framework of an endless obsession over the headscarf, reveals that the juridical regulation of women’s clothes, along with the fundamental dichotomy between the ‘naked-liberated’ body and the ‘covered-constrained’ one, remains at

the core of many polemical debates, in the past as well as today (Hunt 1996). I argue that the dichotomy between the 'liberated' and the 'constrained' woman, along with the polarization of 'secular' and religious', endorse problematic assumptions, not only about the proper place of religion and religious practice within secularized democracies, but also about women's freedom and their possibility of agency: this, in turn, opens the door to re-think law's role in protecting religious freedom and women's rights in the secular west.

The centrality of women's body performativity is exemplified in the comparison between the *Dahlab* (*Dahlab v Switzerland*) and *Kokkinakis* (*Kokkinakis v Greece*) cases decided at the European Court of Human Rights (ECHR). On the one hand, a Swiss teacher was dismissed because she started to wear the veil despite having never told her students that she had converted to Islam, while on the other, Mr. Kokkinakis tried to proselytize in a country where this is illegal. The fact that Ms. Dahlab's illocutionary act (or performance) of wearing a veil was considered more threatening than Mr Kokkinakis' proselytizing reveals a clash between a performative body and the logocentrism on which western polity and law is based. If Kokkinakis's proselytizing is protected, it is because the court perceived he did 'nothing but' speak with the intention to convert another who is free to accept or not; if Ms Dahlab was removed from sight it was because she demonstrated, performed, acted out, her right to be different, which carries illocutionary force. It is exactly the illocutionary force of veiling as a performative act that is at stake. In fact, European scholars and judges tend to see bodily performances through the lens of western semiotics, as 'expression', 'symbol', and 'sign' of a (fixed) profound cultural meaning. As a result, the possibility of agency of Ms Dahlab and many other Muslim women in Europe has been severely limited by the very juridical decision that should, supposedly, have freed her: in other words, as the veil has been understood as a symbol in contrast to the principle of gender equality, it is in the name of women's freedom that Ms Dahlab has lost her job.

In contrast to many western feminists and scholars who have analysed the condition of women in Muslimmajority societies in terms of the moral autonomy of the subject resisting external (patriarchal) structures of power, Mahmood's study (2005) moves 'beyond the teleology of emancipation underwriting many accounts of women's agency' (p. 210) by reconsidering 'the conceptual relationship between desire and self-making, performance and the constitution of the subject, and moral action and embodiment in feminist debates' (p. 203). Drawing from Foucault's analysis (1981) of ethical formation, which understands agency firstly as a capacity required to take specific moral action and secondly, as bound to cultural and historical discourses through which the subject is formed, she intends agency 'not simply [as] a synonym for resistance to social norms but... [as] a modality for action that historically specific relations of subordination enable and create' (Mahmood 2005, p. 157). She argues that 'it is *through* repeated bodily acts that one trains one's memory, desire, and intellect to behave according to established standards of conduct' (p. 23). In essence, it is one's performative practice that determines one's desires and not the opposite: women of the piety movement's repeated bodily acts become indispensable for the self to acquire specific values considered a necessary attribute of the self. For instance, despite a wider consensus among Muslims about the importance of the Islamic virtue of 'modesty', there is no consensus on how this virtue should be lived, performed, and/or experienced and whether it requires the donning of the veil. For most pietist women, the veil not only expresses the value of modesty, but it is also the means *through* which this value is acquired.⁷ Interestingly, they

⁷ It is worth to point out that the 'iteration' of practices involves also a resignification of the meaning of those practices (Benhabib, 2006). Although Mahmood shows the heterogeneity of Islamic discourses and subject formation, critiques of her work alert us that revivalist Islam is not the most powerful dimension of Muslim thought and identity (Masquelier 2010; Osanloo 2009; Marsden 2007; Soares and Otayek 2007). In my analysis, Mahmood's work is relevant in comprehending different way to understand religious performative practices. I

draw a link between the norm (modesty) and the form this norm takes (wearing the veil). In this way the bodily act of wearing the veil becomes a necessary means to express and, at the same time, to acquire the virtue of modesty. Thus, the body emerges as a '*medium for, not a sign of*'. This is why pietists have opened up a conflict with liberal and Islamist nationalist movements: in fact, they treat performative acts primarily as a 'sign of' the self rather than as a 'means to' its formation (Mahmood 2012a).

It is worth noting, however, that different kinds of subjectivity and selfhood inhabit the same historical and cultural space, whereas each of those configurations of personhood is the product of different discourses. In fact, pietist women have a completely different understanding of ritual obligations and the role of the body in forming the 'moral-subject'. These differences within an (apparently) united movement challenge not only the western monolithic idea of individual freedom, agency and body performances, but it also helps to understand how different discourses can form different subjectivities and that those plural subjectivities often escape from the liberal logic of freedom and agency of the (homogeneous) fixed and monolithic Christian/secular law's subject. This is why 'Burqa Avenger' is such an interesting character: in her plurality of performative acts, she escapes the logic of the singular state sovereignty which needs to sustain a fixed and monolithic subject. Jiya wears the *burqa* as a tool of empowerment showing a different embodiment of bodily practices and different concepts of freedom and agency: more than that, 'Burqa Avenger' represents what Agamben (2014) defines as an 'intimacy', a *use of the body*, or a *use of the self*. By escaping from the western semiotic ideology which presupposes that the primary function of images is to communicate fixed meanings, 'Burqa Avenger' avoids being re-scribed as a monolithic subject of the nation-state and she manoeuvres her agency through

do not contend that all Muslims experience religion in the same way: rather, that there are many ways to live, understand, and interpret religion and religious practices.

the different *use of her body* within a community and a plurality of normative choices; it is exactly this plurality that gives her the freedom to perform and manoeuvre her agency within particular discourses.

This plurality of normative choices is embedded in the very structure of classical Islamic law, as Islam is a discursive tradition based on the interpretation of past practices for their re-formulation in the present by creating a link between practitioners and scholars, and between theory and how, praxiologically, norms are lived, experienced, performed, and inhabited (Asad 1986). In fact, for many Muslim believers, Islam is not simply a set of commandments based on religious belief, as in western secular thought, but a way to live and inhabit the world, bodily and ethically: as their aim is to follow the exemplar of the Prophet, a ‘Muslim’s relationship to Mohammad is predicated not so much upon a communicative or representational model as an assimilative one’ (Mahmood 2009, p. 847). The Aristotelian term *schesis*, which is defined as the way in which something relates to something else, can capture this sense of pluralistic embodiment and inhabitation (or intimacy) which is experienced differently by Muslim believers throughout the world: ‘such an inhabitation of the model (as the term *schesis* suggests) is the result of a labor of love in which one is bound to the authorial figure through a sense of intimacy and desire’ (Mahmood 2009, p. 848).⁸

What is interesting to notice, here, is that in many non-liberal traditions the body’s performative acts are understood not necessarily through the lens of western semiotics and, consequently, that the monolithic image of a woman needing to be rescued from a ‘chauvinist religion’ does not necessarily mean a lack of women’s possibility of agency.

⁸ In discussing about ‘piety’ (*pietas*) I draw on Turner (2008) who argues that ‘acts of piety do not simply reproduce habits, but rather challenge existing arrangements both secular and religious...In this respect...acts of piety in empowering people characteristically involve some challenge to the existing order or “city”’ (p. 125).

The full-face-veil worn by the 'Burqa Avenger', for instance, is not only an element through which she achieves her goals, but it is also an element that empowers her by giving her an exceptional possibility of agency, exactly like the mask worn by 'western superheroes': her veil discloses a plurality of different normative choices, of different *uses of the body*, through which she manoeuvres her agency. Likewise, the different uses of the veil in Muslim majority societies reveal not only different concepts of religious practices and different normative choices, but also a notion of women's freedom and agency different from the western/liberal/secular one: if for pietists the veil is a tool to acquire specific ethical achievements, for Bedouin women veiling is a symbol of an individual ethic and honour toward their families (Abu-lughod 2000), while the veil worn by Egyptian women in the mid-1970s can be read both as a mark of piety and as a sign of being an educated and sophisticated urban woman (Macleod 1991).

Therefore, the donning of the veil should not be confused with lack of agency, but should be intended within particular discourses which form not only the subject but also its desires (Abu-Lughod 2002). This may be what is unsettling for western liberals: that desire is not a universal fixed category and subjectivity is a fragile and ambiguous concept constituted through performativity of a lived and ever-changing body of interpretable norms. Those norms are not simply precepts to which the individual submits, but they are an integral part of the individual being: in this sense, norms are not only subverted or re-enacted but also lived, experienced, performed and inhabited. This is not to say that all Muslim women wear the veil to create a pious self, nor that they all intend their bodies as a tool to reach specific ethical achievements: even if a specific group of women wears the veil for a specific reason, it is impossible to generalize because the choice to veil is very personal. Since the practice of veiling takes different colours, shapes and forms, it also implies different meanings and normative choices within different cultural and historical contexts (Davary 2009).

The attempt by western scholars and judges to see the practice of veiling as a fixed and unchangeable religious/cultural symbol, a '*sign of*', not only does not take into consideration the plurality of meanings and practices of veiling and the historical and cultural context within which certain practices, will, and desires develop, but it also imposes a specific semiotic ideology on different cultures.

In 'Christian Moderns', Keane (2007) reveals how the western semiotic distinction between signifier and signified, object and subject, form and essence, mirrors Calvinist and Protestant concerns to institute a separation between the transcendent world and the reality of this world. This distinction has been imposed on other cultures by western missionaries and has become embedded in the secular idea of what it means to be modern and how images work in the liberal/secular world. As, in western semiotic ideology, clothes are conceived as images (Goodrich 1998), they are intended as a vehicle for meanings: they signify structures behind what is represented (Barthes 2006), irrespective of the modality of the subject/object relation. It is exactly this fixed reading of clothes that emerges in the European legal decisions where the practice of veiling comes to be defined as a fixed 'religious symbol' incompatible with the principle of gender equality: those decisions reveal a very secular understanding of religion and religious practices. As I have argued, secularism conceives religion as simple belief and therefore as a matter of personal choice. In contrast, Mahmood's analyses (2005; 2009; 2012a) reveal that religious practices can also be an integral part of the individual. In fact, although many western commentators see religion as 'alien' to liberal/secular thought, the semiotic reading that has been applied by western judges in cases related to the Muslim headscarf implies a specific liberal/secular understanding of religion: one in which the (abstract) individual can choose to separate its personal beliefs from its external being. As Vakulenko (2007) points out, the understanding of veiling as a mere 'religious symbol', as expressed in the ECHR legal decisions over the headscarf, does not

only ignore the social, political, psychological and legal dimensions of the phenomenon, it also reinforces a strict division of the private/public spheres. The secular understanding of religion, then, depends upon a prior normative understanding of what religion is and how the secular law's subject should experience its religious life: this understanding is today embedded in western positive law.

Along with a specific concept of religion, European judges have disclosed a very specific idea of 'womanhood' and what constitutes the (female) body in the modern secular world: in fact, in liberal/secular thought, freedom is intended as the mere possibility of the subject to choose autonomously, based on her own desires. In liberal thought, individual autonomy defines the 'human' and emerges through the distinction between positive and negative freedom which has deeply informed liberal and feminist analyses of women's freedom and women's rights (Hirschmann 1997). Negative freedom is defined by the absence of external obstacles, while positive freedom is understood as the capacity to realize an autonomous will (Taylor 1979). Thus, in western liberal thought, autonomy 'is a procedural principle, and not an ontological or substantive feature of the subject, it delimits the necessary condition for the enactment of the ethics of freedom' (Mahmood 2005, p. 11). The difficulties in the western approach to freedom are revealed in the complexity of drawing a clear line between an internal self, with its own particular desires, and the external world, in which the subject exists: 'without such specificity of context, the individual too is unspecified, an abstraction' (Hirschmann 2009, p. 10). Since the (western) individual emerges as a mask, an abstraction, the western approach does not help us to understand how will and desires are formed. If, as positive liberty scholars argue, we have conflicting internal desires, then how can we understand our true will? If, echoing Foucault (1992), the subject emerges as the product of a particular form of social formation and as such is not only 'constrained' but also

formed by it, then we need to interrogate the liberal assumption of a 'rational-self-master' who knows exactly what his/her true desires are.

Abu-Lughod's study (2000) of Bedouin women is an interesting example of how the concept of freedom can be understood differently in non-liberal contexts. Although individual autonomy is an important feature in Bedouin society, the concept of membership, obedience to sources of authority and honour, remains central. The link between honour and modesty made by Bedouin society could be understood as a tool to uphold social inequalities. It can, though, be argued that this is what Foucault (1979) calls social control, which is based on the colonization of desires: this kind of colonization 'not only coerces individuals, but redefines such coercion as freedom and choice thereby denying individuals the ability to see the control they are subject to, and making them the instruments of their own oppression' (Hirschmann 1997, p. 478). As Hirschmann (2009) argues, if on the one hand women manoeuvre their agency within structures of power, often re-enacting patriarchal norms, then on the other, those norms gave them the framework within which they negotiate their choices.

Thus, while every human is confronted with choices, those choices are formed by the discourse people live in because it is the general ethical dimension that not only gives sense to the self in relation to others but also forms a notion of freedom that can only unfold itself in a specific cultural narrative. A cultural narrative does not imply a restriction against which a will would have to be formulated; rather, it defines a person and his or her will as a bent toward the world (Alvi 2013, p. 182).

Therefore, the liberal opposition between those who defend the 'free will' of Muslim women and those who see veiling as a backward cultural imposition is a fake one. *The paradox of liberalism lies exactly in the formulation of choice as measurement of freedom* (the more choices I have, the more I am supposed to be free) (Hirschmann 2009). Clearly, a

study on veiling cannot be mapped from the western binary distinction between more and fewer choices, as the way in which we experience our daily life is far more complicated.

In fact, as I have argued, the western universalist model of human action presupposes ... a natural disjuncture between a 'person's true desire' and those that are socially prescribed...The politics that ensues from this disjuncture aim to identify moment and places where conventional norms impede the realization of an individual's real desires, or at least obfuscate the distinction between what is truly one's own and what is socially required (Mahmood 2005, p. 149).

In contrast, the studies I have taken into consideration hypothesize a possible separation between self-realization and autonomous will and between agency and discursive infrastructures: in particular, the liberal distinction between a subject's own desires and social conventions cannot be easily presumed in Muslimmajority societies since 'socially prescribed forms of behaviour constitute the conditions for the emergence of the self as such and are integral to its realization' (Mahmood 2005, p. 149).

In this sense, not only does the understanding of veiling applied by European judges naturalize a specific Christian/secular/liberal subject by failing to understand the embodied practices through which a subject comes to be constituted (Mahmood 2009), but it also presents (religious) beliefs as 'irrational', 'unreal', and 'immaterial': this, in turn, has profound consequences when encoded within the law and has been particularly useful in determining a 'real' or an 'imagined' harm.⁹ In the case, the law has determined that the harm caused by a veiled woman to the society is of more importance (or 'more real') than the harm caused by the law to many veiled Muslim women in Europe in the name of women's rights.

⁹ As McClure (1990) argues, the idea that religion is primarily a 'private belief' emerged in the eighteen century and was strictly connected to the notion of 'worldly harm' and the proper management and governance of the emergent nation-state in Europe.

Therefore, those legal decisions disclose and make possible a specific notion of freedom and un-freedom (Vakulenko 2012):¹⁰ they also reveal not only a western inability to accommodate different (religious) sensibilities, but also the paradoxes implicit in liberal thought. If the freedom of the western individual is based on her ability to choose, then Muslim women, who choose to wear the veil as autonomous individuals, should be free to dress as they please. However, paradoxically, the same law that is founded on the concept of freedom and individual autonomy is also the one that limits women's agency by normatively regulating their attire.¹¹ Thus, what veiling unfolds is the blindness of our own practices, including dressing: 'social constructivism [should remind] us once again of the inevitable situatedness of meaning in context' (Hirschmann 2009, p. 174), which implies that all practices, including veiling, shall be understood within specific structures of power (Haraway 1988); in the case, the power of western discourse lies exactly in the homogenized representation of covering practices which allows the continuation of an epistemic violence against Muslim women (Husain and Ayotte 2005). By defining veiling as a 'backward' practice, not only do European judges violate women's own understanding of their own practices, but they also reduce the 'woman question' to a single piece of cloth which takes different forms, lengths, colours and meanings in different cultural and historical contexts (Ahmed 1992; El Guindi 1999; Mernissi 1991). Those decisions support 'western imperialism by re-inscribing western definitions and dichotomies onto eastern practices in a reactive manner' (Hirschmann 2009, p. 195): by failing to recognize the plurality of norms, ethics and bodily practices represented in the veil, the individual is reduced to a singular and

¹⁰ Weir (2013) suggests Mahmood's analysis might lead to a feminist re-conceptualization of freedom.

¹¹ As Vakulenko (2012) argues, the concept of autonomy has been the main domain through which read gender equality and freedom of religion: the 'obsessive scrutiny of Muslim women's autonomy is unhelpful as it assumes as belief in absolute free choice, which hinders one's ability to live out one's agency meaningfully and relate to the world around' (p. 13).

fixed identity (Doniger 2004). It is exactly for this reason that the veil is seen as a ‘clash of civilizations’: if we reduce the human to a singular and fixed identity, then this identity can be *measurable* only through the allegiance to a specific power which, in turn, forms identities, subjectivities and desires. This is the way the plural subjectivities and identities of Muslim women have been reduced to a static and monolithic law’s subject: this ‘reductionism’ is not only theoretical, but is part of a wider neo-colonial and paternalistic political context in which the juridical regulation of women’s body becomes a useful tool to control the public sphere (Husain and Ayotte 2005) and to justify western imperialist war as well as Islamists’ nationalist struggles: ‘arguably, in neither case do women take part in constructing the framework within which decisions about dress take place, but rather, are forced to respond in conflicting directions to frameworks constructed by men’ (Shaheed 1994, p. 1003). The mandatory de-veiling operated by the Shah in pre-revolutionary Iran, for instance, was no less oppressive than the compulsory re-veiling ordered by the Islamic revolutionaries in the aftermath of the 1979 Iranian revolution (Chehabi 1993): both (patriarchal) regimes aim at legally regulating and controlling women’s attire by inscribing women’s bodies as monolithic symbols of cultural belonging and not as subjects of history.

Thus, it is not the veil that renders women free or un-free, but the means that patriarchy allocates to a specific article of clothing in order to control and limit women’s agency. This is particularly evident in the ‘summer 2016 *burqini* affair’: from a purely aesthetic point of view, there is no difference between a *burqini* and swimwear worn by divers. Moreover, plenty of people cover on the beach to protect from the sun or for a variety of other reasons (Chemaly 2016). The power of the *burqini*, then, does not lie in a mere image of a covered body, but in the symbology attached to it. Thus, it is not through the concept of women’s freedom and autonomy that it is possible to understand the gender dimension of the ‘*hijab* obsession’ but through the analysis of its symbology.

III. THE SYMBOLOGY OF THE 'OTHER'

The definition of veiling as a 'religious symbol incompatible with secular values and gender equality' is an important feature in the western discourse over the practice of veiling. The power of symbols is well known in critical legal theory; through symbols and images, it is possible to understand what cannot be said directly as images remind us of ancestral myths still unattached to the symbols of institutional prose (Goodrich 1995). For Goodrich (1995), symbols and images have the power to create an illusion of presence and attachment to what is 'un-representable': since images have been instituted to transmit and establish social/political order, they have the power to constitute a specific kind of law's subject who is bound to a specific order of power and imagination represented and protected by the rules of law. As Goodrich (1995) argues,

whichever form the image took, either licit or illicit, iconic or idolatrous, its function was structural, it established the order of meaning and of law, it governed the soul by dictating what the heart could see or the mind portray of itself...[T]he definition of an order of true reference, a doctrine or creed, required the designation of an order of signs through which the...subjects of law, could be ordered to imagine, perceive, understand, or know the invisible truth. (p. 42)

Hence, the control of images in the public sphere aims at instituting a 'particular form of governance' and, along with it, a particular form of 'regulated' behaviour where the law's subject emerges as emotionally attached to an 'imagined community'(Anderson 1991). In fact, as Foucault (2002; 1979) reveals, knowledge embraces both the 'visible' and the 'sayable' whereas each historical moment comes out as the combination of these two elements: the 'visible', in contrast with the 'sayable', is a form of knowledge able to create multiple networks of power relations and subjectivities. The place assigned to the visible 'demonstrate[s] that rhetoric functions epistemologically not only by virtue of the sayable...but also...through ways of seeing. The visible, as a means of knowledge-

production, is rhetorical because such knowledge, rendered through complex networks of seeing and being seen that define entire fields of the visible' (Vivian 1999, p. 132). Images, then, create meanings: through their symbolic power, they 'move the mind' and they create a link between 'internal' and 'external', 'form' and 'substance'. Since, historically, garments have been read as images, as a particular signifier of a general signified (Goodrich 1995; Hunt 1996), they are strictly related to the formal and normative system that is 'defined by normative links which justify, oblige, prohibit, tolerate, in a word, control the arrangement of garments on a concrete wearer who is identified in their social and historical place' (Barthes 2006, p. 7). Drawing from Saussure's system of language, Barthes (2006) asserts that clothes are not simply a cultural phenomenon which defines personal identity in a specific group, location and time, but they are a vehicle of meanings: they signify structures behind what is represented.

As I have argued, the distinction between object and subject, signifier and signified, form and substance is in reality an integral part of Protestant semiotic ideology which is now embedded in the secular idea of what it means to be 'modern'. Drawing from Keane (2007), who finds that Saussure's system of language based on the distinction between signifier and signified mirrors Calvinist and Protestant concerns to institute a distinction between the transcendent world and the reality of this world, Mahmood (2013) points out that 'to confuse one with the other is to commit a category mistake and fail to realize that signs and symbols are only arbitrarily linked to the abstractions that humans have come to revere and regard as sacred' (p. 73).

It is exactly the (western) implied duality between signifier and signified that is at stake in the regulation of veiling, in which 'the veil' has been defined as a fixed religious/cultural symbol. However, as Asad (2006) argues, since symbols 'invite one to do a

reading of them independently of people's stated intentions and commitments' (p. 104), their power lies in the capacity to evoke a monolithic and static belonging. In fact,

The process of signification is both rational and clear. It is assumed that a given sign signifies something that is clearly 'religious'. What is set aside in this assumption, however, is the entire realm of ongoing discourses and practices that provide authoritative meanings. The precision and fixity accorded to the relationship of signification is always an arbitrary act ... where embodied language is concerned. What is signified by the headscarf is not some historical reality (the evolving Islamic tradition) but another sign (the eternally fixed 'Islamic religion') which, despite its overflowing character, is used to give the 'Islamic veil' a stable meaning (Asad 2006, p. 97).

The current European legal decisions over women's headscarves reveal that the veil has the power to evoke the 'Islamic veil' so, 'more than an image, the veil is an imaginary – a shrouded difference waiting to be unveiled, to be brought into the light of reason, and made indifferent' (Asad 2006, p. 100). In essence, by defining veiling as a religious symbol or as a symbol of gender oppression, the court implied a duality between signifier and signified as the only meaning that the veil can have is the one gained through its reference.

This duality, which mirrors the secular separation between private and public, state and religion, is revealed in the distinction made by article 9 (Freedom of thought, conscience and religion) of the European Convention of Human Rights between faith and its manifestation. In fact, according to the ECHR, religious freedom is not limited to belief but also extends to its manifestations (*Kokkinakis v Greece*, para 31): however, not every act based on religious belief is protected by article 9. In the ECHR's decisions, the term 'practice' in article 9(1) 'does not cover each act which is motivated or influenced by a religion or belief' but only the 'normal and recognized manifestations' of religion or belief that 'actually express the belief concerned' (*Arrowsmith v the United Kingdom*, p. 20). The distinction between 'belief' and 'manifestation' made by article 9 has received little attention from jurists as it is taken as necessary in the legal reasoning (Cumper and Lewis 2008).

However, it is exactly through the distinction between *forum internum* and *forum externum*, public and private, signifier and signified, that the Court presupposes a religious individual whose faith is a simple private matter distinguishable from its manifestations (such as symbols, rituals etc.).

The idea that religion necessitates a separation between what is observable and what is 'interior' to the subject depends upon a very specific definition of religion as developed in the Enlightenment. It is during this period that religion started to be defined as a 'personal conviction...which can exist separately from one's public loyalties to the State' (Cavanaugh 1995, p. 403). However, the idea of religion as a mere private belief neglects the particularities of different faith communities and the fact that religious sentiments are lived and experienced differently, as Mahmood's analysis reveals. Moreover, as Cavanaugh (2009) observes, the descriptive definition of religion has not only facilitated a new form of governmentality but it has also created a fundamental problem: by defining religion as a mere private/un-real/mythological belief, religion itself becomes a normative notion which acquires a specific meaning based on particular power relations. In other words, the definition of religion depends on who has the power to define it in different cultural and historical contexts.

For Asad (2006), it is the sovereign that, by acquiring a teleological and transcendental power, imposes a specific definition of religion and religious symbols on its subjects. He asserts that the banning of the veil can be understood as an *exercise of sovereign power*, as it is the sovereign that decides which symbol is to be regarded as 'religious'.¹² The

¹² In an interesting analysis of the recent judgments relating to Australian territory in the Indian Ocean, Motha and Jones (2015) argue that 'sovereign power operates by attributing signs to bodies whose localization offshore is central to the production of their juridical status and that of the sovereign authority they come in contact with' (p. 255).

necessity of a sovereign power to define symbols is clear in the Stasi Commission's report¹³ which points out that the donning of the veil overloads teachers and public officers as they 'are often left isolated, in a difficult environment to define which "religious symbol" can be legitimate in a public school' (*Commission de Réflexion*, p. 31). In this sense, the state assumes the teleological, transcendent and absolute power of defining images, symbols, and metaphors in the public sphere. Thus,

[the] secular state today abides in a sense by the *cuius regio eius religio* principle (the religion of the ruler is the religion of his subjects), even though it disclaims any religious allegiance and governs a largely irreligious society...[in fact] it is not the commitment to ... a particular religion that is most significant in this principle but the installation of a single absolute power – the sovereign state – drawn from a single abstract source and facing a single political task: the worldly care of its population regardless of its beliefs. The state is now transcendent as well as a representative agent (Asad 2006, p. 94).

The transcendent character of the state as absolute representative of 'this world' is integral part of western secular ideology. McClure (1990) shows how the separation between private and public, along with the western/universalist definition of religion, is linked to statecraft and authority. She argues that the relegation of religion into a private domain allows the state to be the only rightful power to regulate the civil domain, and so to impose conformity or toleration towards different religious practices in the name of 'public order and security'. In fact, Locke's epistemology focuses on the distinction between 'this-world' (subject to civil regulations) and the 'other' (metaphysical) one: while religion concerns the individual's salvation in the 'other world', 'this-world' is regulated by civil authority. In essence, the seventeenth-century distinction between civil and religious domain, private and public, state and religion, has given to the state the legitimacy of regulating any visible

¹³ The Stasi Commission has been set up by the French Government in order to investigate the application of the principle of *laïcité* in France.

practices in the civil domain in the name of the civil interests of ‘this-world’. For McClure (1990), the emphasis on ‘worldly effects’ operated by western philosophers

foreclose[s] the use of coercion in religious matters even in the hands of those legitimately entitled to wield it in the domain of civil interests...it is precisely the civil criterion of worldly injury that operates to circumscribe the scope and limits of what might be advanced as an appropriate expression of religious belief and practice in the first place (p. 378).

In this view, the rule of toleration established by western secular tradition is based not on a principle of ‘personal consciousness’, but on the notion of ‘worldly harm’, as evident in the analysis of the ‘*hijab* cases’ in which the headscarf has been forbidden through the exceptions made by art. 9(2).¹⁴

Although the judges have not presented any objective proof of the veil’s danger to European democratic societies, they have constructed veiling as an element capable of ‘disrupting societies’ while defining what is perceived as a ‘social harm’ in modern western societies. In all the analysed juridical decisions, veiling emerges as an ostentatious, unnecessary, and unacceptable manifestation of a religious belief and comes to be perceived as a ‘danger’ to the freedom of others or as an element capable of ‘disrupting’ the ‘peace’ of the society. In the *Sahin* and *Begum* cases, for instance, the veil has been defined as a symbol of a dangerous and radical Islam while in *Dahlab*, a symbol of gender inequality: all in all, the wearing of the veil has been seen as creating a ‘social harm’ because in contrast with fundamental secular values and gender equality. As McClure (1990) argues, ‘in the context... of contemporary expressions of “difference”, themselves articulated in terms of worldly harm, the neutrality of civil law and state policy, guaranteed epistemologically with respect to

¹⁴ Article 9.2 of the European Convention on Human Rights states that ‘Freedom to manifest one’s religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others’.

religion, is extinguished in both logical and practical terms' (p. 386). In this view, European legal decisions over the practice of veiling indicate that secularism is not a neutral position as, inevitably, any exercise of civil power would favour one definition of 'religion' over others through a specific normative understanding of what a 'social harm' is. In the case, European judges, who have (erroneously) intended secularism as a synonym of state neutrality, have banned the veil based on the 'safety and security' of western/liberal societies while applying a very 'modern' Christian/secular/liberal definition of religion: this, in turn, depends upon a prior normative understanding of what religion is and how the secular law's subject should experience its religious life.

What it is missed, then, in the western debate over the women's headscarf is the way in which secular liberalism understands and defines religion and religious practices in the modern world and how this understanding is encoded in the law. Thus, secularism emerges not as the mere separation between the private and the public, religion and the state, but as the re-configuration of religious sensitivities and religious practices in the secular public sphere (Mahmood 2013). In other words, secularism becomes the imposition of a specific form of subjectivity and emerges not only as a 'constellation of institutions, ideas, and affective orientations that constitute an important dimension of what we call modernity, [but also as a] concept that brings together certain behaviours, knowledges, and sensibilities in modern life' (Asad 2003, p. 25).¹⁵

This, however, not only has the power to exclude different subjectivities, but it also eludes the gender dimension of the problem. Clearly, the regulatory principle implied in the European legal decisions over the practice of veiling is not 'gender neutral' as it discloses a

¹⁵ As Vakulenko (2012) argues, the 'currently dominant model of secularism...represents a rather particular historical formation and political rationality [in this view]...secularism...encourage certain "compartmentalisation" and transformation of religion, rather than its total eradication' (p. 14).

very specific idea of ‘womanhood’ and what constitutes the (female) body. This is particularly exemplified in a passage of the Stasi Commission report which states that ‘young men force [girls] to wear clothes that are concealing and *asexual*... and if they do not conform with such rules, they are stigmatized as “whores”’ (*Commission the Réflexion*). This passage implies that women, in order to be ‘free’ and ‘equal’ to men in liberal societies, should underline their sexuality: in this sense, ‘the “power of the secular” seems... to reside in its capacity to naturalize such a distinctive perspective on the female body, and to represent and grasp the non-veiled body as the natural and “free” body’ (Fadil 2011, pp. 96–97). As women’s bodies have been ‘naturalized’, their ‘desires’ also turn into something ‘neutral’ to be defined by the appropriate authority. In the case, by defining the veil as a ‘religious’ symbol, the court operated a detachment of the subject from its ‘object’: desire, in this context, becomes something neutral to be defined by the state, so the object of desire (the veil) can now be defined as ‘religious’ or ‘irreligious’ rather than through a socio-psychological approach. Therefore, what is at stake is the association between veiling and specific ‘desires’, as it is presumed that ‘the wearer’s act of displaying the sign ... incorporates the actor’s will to display it – and therefore becomes part of what the headscarf meant’ (Asad 2006, p. 97). It is through the definition of veiling as a ‘symbol’ that the ‘covered body’ becomes something static, a symbol of a specific cultural belonging, an ‘object’. However, if a ‘sign designates not a real status but an imaginary one, [so the veil is] an imaginary transgression’ (Asad 2006, p. 97). In this light, not only does the ‘veil’ emerge as a ‘fantasy’, but also the ‘(Muslim) woman’ becomes an ‘imaginary objectified body’, a mere carrier of specific cultural/religious/ethnic values.

In fact, gender plays an important role in the construction of a people’s identity, as it is exactly through women’s body that ideas of the ‘self’ and the ‘other’ come to be constructed (Benhabib 2002). This construction is played around the definition of symbols

and practices that mark the boundaries between ‘belonging’ and ‘un-belonging’, between the ‘citizen’ and the ‘stranger’ (Yuval-Davis 2006). In the case, as the veil is seen as a symbol of a monolithic religious/cultural belonging in contrast with western values, it is integral to nation-building (Herman 2006) which, as I have argued, is attained through the regulation of the visible: this, in turn, creates an emotional attachment to an ‘imagined community’. Yuval-Davis (2006) makes a distinction between ‘belonging’ and ‘politics of belonging’: the first refers to an emotional attachment, while the latter refers to ‘specific political projects aimed at constructing belonging in particular ways to collectives that are, at the same time, themselves being constructed by these projects in very particular ways’ (p. 197). In essence, the ‘politics of belonging’ defines who ‘belong’ to the nation and who does not: ‘if the state binds in the name of the nation, conjuring a certain version of the nation forcibly, if not powerfully, then it also unbinds, releases, expels, banishes’ (Butler and Spivak 2007, pp. 4-5). Although differences in legal traditions, political institutions, and the precise meaning of public/private divide (Lister et al. 2007), in all European countries the ban of the veil has been framed through a dichotomy between ‘us’ and ‘them’ whereas values such as gender equality belong to the west. In this way, the western discourse over the veil creates a link between citizenship, gender, ethnicity and belonging. In the *Begum* case, for instance, Baroness Hale advocated the necessity for schools’ neutrality to enhance the principle of gender equality by referring to Raday who stated that ‘mandatory policy that rejects veiling in state educational institutions may provide a crucial opportunity for girls to choose the feminist freedom of state education over the patriarchal dominance of their families’ (*Begum v Denbigh High School Governors* para 98),¹⁶ In this way, Baroness Hale have constructed gender equality as a ‘European/western’ value and has framed the veil as something that

¹⁶ Baroness Hale quoting Frances Raday, ‘Culture, Religion, and Gender’ (2003) 1 *International Journal of Constitutional Law* 663, 709.

excludes Muslim women from the national community and from the enjoyment of a 'feminist freedom'. As Andreassen and Lettinga (2011) argue, 'Muslims are positioned as a threat to feminist achievements of (bodily) self-determination and equality, which are represented as universal norms that everyone should follow' (p. 29). In 2006 Netherlands has introduced an 'integration test' to obtain Dutch citizenship which includes the compulsory viewing of a documentary about Dutch culture showing, *inter alia*, women in topless (Crouch 2006). In 2008, a Moroccan woman, mother of three children and married to a French citizen, was denied French citizenship because her full-face veil did not fulfil the 'condition of assimilation', which is considered an essential requirement to gain French citizenship (Chrisafis 2008). Similarly, the 'burkini ban' has been framed as aiming at integrating Muslims into French societies (Shabi 2016). This shows that the discourse over the veil in Europe has been framed as a problem of integration and banned in order to 'save' women's freedom and western normative/cultural values. More importantly, the discourse over the veil reveals that (Muslim) women's body emerges as a cut-dividing line, a physical separation, between 'us' and 'them': through their bodies, veiled women become the physical (and visible) symbol of the integration of the Muslim community into western societies. In essence, as the 'un-veiling' has become a symbol of western universal value of gender equality, women's body emerges as a visible marker of cultural belonging, defining specific boundaries. By authenticating veiling as a religious symbol and posing it antithetically to 'citizenship', modern Christian/secular/liberal law assures that religious particularity, such as wearing the veil, should not be in contrast with modern secular/liberal principles and places citizenship as itself a marker of belonging (Yuval-Davis 2006). Thus, through women's body, western law has created a link between, gender, religion, ethnicity and belonging which, in turn, has formed not only a specific western/Christian/secular law's subject, but also a specific concept of citizenship. The idea of 'proper belonging' is evident also in other

juridical decisions over religious matters. Through an analysis of child welfare cases in the UK, Jivraj (2013) argues that religion comes to be racialized¹⁷ in a way that the line between religion, ethnicity and race are blurred.¹⁸ She points out that the conceptualization of religion as applied by western/positive law emerges as ‘a signifier of belonging, community and nationhood in ways that distinguish and demarcate between the secular Christian west and (uncivilized) racialized non-christian others’ (p. 11).¹⁹

The result of this operation of signification is that many Muslim women in Europe have been removed from the public sphere or un-unveiled to be re-veiled with the mask of the ‘western liberated woman’: so it seems that in ‘liberal’ and democratic Europe, women all look alike. The debate over the *hijab* and the definition of the appropriate garments women can wear in the public sphere highlights that in western countries the ‘woman question’ has been a useful tool to create a dichotomy between two dis-similar imaginaries of womanhood;

¹⁷ Lewis (2004; 1996) and others (Abu-Lughod et al. 2001; Yegenoglu 1998) have pointed out that the racialization of religion derives from orientalist discourses in which gender plays an important role. Similarly, for Mahmood (2012), the discourse of religious freedom was, from its inception, intertwined with western forms of political power. She traces the legal discourse of ‘religious liberty’ within the framework of the colonial project and explains that the notion of ‘religious minority’ does not refer to a group protected by the law, but to a category produced by the legal codification of the principle of ‘religious minority’.

¹⁸ Herman and Jivraj (2011) have argued that ‘judges deploy three distinct yet, occasionally, overlapping approaches to understanding non-christianness: (1) as belief and ritual practice; (2) as racial genetic marker; and (3) as culture and personal identity’ (p. 286).

¹⁹ It is worth to point out that for Jivraj (2013) the concept of non-Christian religions was, from its inception, not only a modern and onto-theological concept, but also a racialized one, brought into being predominantly from a European Christian thought. Along with it, Masuzawa (2005) and others have argued that a key effect of this scholarship has been the emergence of an ‘epistemic regime or way of thinking about and understanding non-European Christians’ (p. xii). In this way, the racialized notions of ‘non-Christiannes’ becomes part of a wider political project of a ‘modern European identity’ construction (Masuzawa 2005; Miles and Brown 2003).

the ‘constructed’ western ‘liberated’ woman, and the ‘imaginary’ Islam-ist one. However, reducing the ‘veil’ to a religious/cultural symbol simplifies the complexity of subject formation; it betrays the rich history and wide meanings of the practice and ‘it presents the veil and its regulation as a problem in need of a solution rather than asking how this symbol comes to be regarded as a problem’ (Bomeman 2014, p. 216).

IV CONCLUSION

In March 2016, the French minister for women’s rights, Ms. Laurence Rossignol, compared women who wear the veil to ‘Negroes who supported slavery’. In the interview, Ms. Rossignol criticized many western fashion companies for selling items such as the *burqini*, and new ‘fashionable’ and ‘modern’ *hijabs*. Surprisingly, not only is she considered a passionate defender of women’s rights but she was also one of the founders of the anti-racist coalition, ‘SOS Racisme’ (BBC 2016). Not only does this (apparent) contradiction mirror a liberal understanding of women’s freedom and agency, but it also encodes a very secular understanding of religion: while race and biological differences are seen as a tangible difference, religion is seen as a personal choice. In fact, in secular thought, religion is defined as a set of commandments to which the individual submits based on ‘personal’ beliefs. This is why, perhaps, Ms. Rossignol thinks that women who wear the veil have implicitly or explicitly ‘chosen’ their state of slavery. However, as I have argued, for many non-liberal traditions, including Islam, bodily practices are an integral part of the individual. In particular, Mahmood’s analysis discloses a concept of agency that emerges from ‘within semantic and institutional networks that define and make possible particular ways of relating to people, things, and one self’ (Asad 2003, p. 78). In other words, she discloses the existence of other forms of subjectification that are not necessarily contained in the neo-liberal idea of freedom as autonomy and the Manichean dialectic between freedom and coercion. Along

with it, she discloses a different understanding of religion and religious practices. In this light, by defining the veil as a fixed symbol of women's oppression in contrast with 'secular' values, not only has Ms. Rossignol failed to recognize other forms of humanity and other concepts of freedom, but she has also applied a very western semiotic understanding of images.

In fact, as my analysis discloses, in the western discourse over the veil, a specific western/Christian/secular semiotic understanding of religious practices has been the main domain through which European judges have read Muslim women's bodily practices. As clothes have been intended as images, symbols and metaphors of a specific internal self, garments have the power to operate a visible differentiation, a boundary, a clear-cut dividing line, between citizens and foreigners (Goodrich 1995). Through clothes it is thus possible to conceptualize nationality, geography and gender as a rhetorical form of the visible which 'make[s] the world known to different individuals, who engage, on the basis of such knowledge, in the ongoing refashioning of life in the public spaces' (Vivian 1999, p. 120). In fact, the visible, unlike the 'visual' which is a simple 'representation', depends upon a symbolic order which emerges as 'a rhetorical form that produces effects merely through what is rendered as "self-evident" or "natural"' (Vivian 1999, 133). It is therefore clear that the legal regulation of clothes does not aim to 'cover' or 'un-cover', but to 'order' and control the public sphere in order to rhetorically construct meanings and subjectivities. This is the way clothes have always been regulated to visibly shape the public sphere (Hunt 1996; Goodrich 1998). In fact, as I have argued, since 'forms of dress, as with forms of architecture, are not [only] mere metaphors for the power and authority of the political state [but] they instantiate the power and authority of the political state' (Watt 2013, p. xv) the sovereign power has always had a particular interest in regulating clothes in the public sphere.

In the case, as the symbology and the inscription of women's bodies into the homogeneity of western democracy has been set by the law, Muslim women have been unveiled to be re-veiled with the mask of the unified Christian/secular law's subject which emerges with his/her 'new clothes' as the image, the mirror, of a precise legal order, of law's appearance in the social realm: 'the social body, the icon and mode of civility, included and annexed the subject ... it was the logic of the mirror, of mimetic duplication, of the mask or image, which is to say, of the father in the son' (Goodrich 1995, pp. 89–90). In fact, if metaphors produce the necessary emotional attachment to legal obedience and political love, then the visible has to mirror a specific order of power and imagination and the legal subject should mirror a legitimate order of thought (Goodrich 1995). Therefore, the legal subject comes to be formed and, at the same time, subjugated, *by* and *through* a specific form of visibility. In essence, the regulation of images and clothes in the public sphere emerges as the regulation of the 'licit' form of visibility and its proper reference in order to forge and create a specific law's subject (Goodrich 1995): as I have argued, in the western discourse over the veil, the liberal/Christian/secular legal subject is intended as someone who can 'choose' whether to be religious or not, and is able to separate its internal from its external being. In other words, secularism has set up a specific modular conception of religiosity which is intrinsically linked and historically conjoined to the modern category of the 'secular' (Asad 2003; Casanova 1994; Taylor 2007). In fact, as my analysis discloses, the definition of religion as applied in the legal decisions over the practice of veiling (based on the distinction made by art 9 between faith and its manifestation) emerges as a specific western/modern definition which stems from the development of Christianity.²⁰ By defining the veil as a 'religious symbol' in contrast with western/secular values, the law has 'authenticated' and

²⁰ On the development of secularism and Christianity (see Masuzawa 2005; Asad 2001; Diamantides 2015; 2006)

‘legitimized’ not only the political discourse around the representation of the veil, but also specific practices and understanding of religion and the religious subject. In this sense, religion is produced through law as well as Islam comes to be produced ‘by the power of state discourse –through the headscarf’ (Jivraj 2013, p. 38).

This understanding of religion and religious practices, mirrored in the separation between private/public, religious/secular, signifier/signified and ‘faith’ and ‘its manifestation’ makes room for state action to identify and characterize different social spheres of competence such as ‘religious’ and ‘secular’ and to justify limitation of personal freedoms (Cavanaugh 2009). Thus, by regulating women’s veil, law allows a double movement which blurs the line between the public and private domains. In fact, on the one hand, by determining the meaning of specific symbols in advance, the rules of law form a specific Christian/liberal/secular citizen and its being, its desires, while on the other, by giving to religious practices their proper place, it takes significant steps in limiting the personal freedom of Muslim women. In other words, on the one hand, secular/liberal polity tries to operate a separation between private and public, spiritual and temporal, while on the other, the state takes the responsibility of creating Christian/secular citizens by regulating their private lives, ethics, and sentiments through the control of symbols in the public sphere. In the case, by defining and legitimizing what the appropriate attire is for Muslim women, not only does the sovereign state define its subjects by ‘clearing’ the public sphere of ‘intrusive symbols’, but it also defines the proper place for religion by bringing private sentiments into the public scrutiny of the secular polity.

In this way, the ‘secular’ state has created the conceptual conditions to secure the loyalty of its citizens, irrespective of different religious allegiances. As religion directs people to other loyalties and other ‘worldly-powers’, the state has to define its place in order to assure the loyalty of the Christian/secular law’s subject to a transcendental absolute power

through regulatory mechanisms that ‘normalize’ and ‘naturalize’ the private life of its subjects.²¹ Thus, secular liberalism emerges as the re-formulation and regulation of religious sentiments and religious practices through the force of a law which encodes Christian/secular/liberal values (Mahmood 2009). This re-configuration of religious practices, which has been set through an exercise of sovereignty, has created a link between gender, ethnicity and belonging that reveals something deeper than the mere defence of western (universalist) values. European legal decisions over the practice of veiling rely on a fundamental dichotomy between a ‘tolerant’ Christian/secular thought, presented as a central value in western civilization, and an ‘un-democratic’ Islamic thought, presented as a threat to western democracy: in essence, in the discourse around the veil, ‘secular’ and ‘modern’ emerges as the universal standard of civilization in contrast with pre-modern religious particularity (Asad 2006b; Razack 2008). As the secular has become synonymous with ‘modernity’, what is in contrast with western/secular/liberal values is considered ‘backward’ or ‘pre/anti-modern’. Since Muslims are supposedly unable to distinguish between religion and the state, private and public, *forum internum* and *forum externum*, they are seen as ‘backward’ people in need of a positive law able to ‘rescue’ them from their backwardness and to accommodate them into western/secular/liberal society. Thus, citizenship emerges as something constructed by an act of sovereignty (what Yuval-Davis calls ‘politics of

²¹ Motha (2007) sees in the limitation of Muslim women’s personal freedom a tension between ‘autonomy’ and ‘heteronomy’. Through an analysis of the formation of the ‘sacred’ in secular thought, he argues that ‘the contemporary crisis of liberal democracy stems... from the inability to sustain a political formation either by monistic authority (of God, monarch, or its modern variation as ‘people’), or by the various hetero-nomic formations of political community determined by history (class and labour), religion, culture, or ethno-nationality’ (p. 145). In this light, European legal decisions over the practice of veiling reveal the paradoxes of secular theology which ‘manifests the constitutive limits of liberal democracy’ (p. 160) as ‘it cannot guarantee its own law by its own means unless the autonomy of the political is always already heteronomous’ (p. 162).

belonging'), while the Christian/secular/liberal subject emerges as 'a particular kind of contradictory individual – one who is morally sovereign and yet obedient to the laws of the secular republic, flexible and tolerant yet fiercely principled' (Asad 2006, p. 104); a 'citizen' able to take part in the 'game of the sign' and thus show his/her loyalty to the absolute sovereign power. Through an *exercise of sovereignty*, then, the absolute power defines subjectivities by visibly shaping the public space through the force of the law while defining the public limits of religious sentiments: paradoxically, the sovereign state 'realizes its universal character through a particular (female Muslim) identity, that is, a particular psychological internality' (Asad 2006, p. 98).

The consequence of secularist's normative assumptions over religion and the religious subject is the exclusion of (non-Christian) manifestations of religious belief and the legitimization and authentication of a specific form of religiosity and citizenship. This is clear in the German debate over women's veiling. Mrs Annette Schavan, former Minister of Education in Baden-Württemberg, have argued that 'other than the headscarf, the Christian cross belongs to our Western culture, to our traditions and symbolizes here brotherly love, tolerance and maintenance of fundamental human values' (Andreassen and Lettinga 2011, p. 30). As a result of this reasoning, veiled catholic nuns can teach in Baden-Württemberg while Muslim veiled women cannot. The western discourse over the veil, thus, reveals the paradoxes and limit of liberal/secular thought and the inability of western/liberal democracies to accommodate different (non-Christian) subjectivities. In other words, by constructing veiling as something intrinsically other, European judges have created a link between women's body, ethnicity and citizenship which results in the exclusion of different subjectivities. Thus, more than a fixed symbol of universal women's oppression, the veil emerges as the metaphor of western anxieties and of the paradoxes and implicit assumptions of western/liberal/secular thought.

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