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From Text to Meaning: Unpacking the Semiotics of Article 9 of the European Convention on Human Rights

Giorgia Baldi[1]

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Abstract

Through an analysis of the European Court of Human Rights' decisions concerning the practice of veiling, this article problematises the semiotics-architectural structure of article 9 of the European Convention of Human Rights (Freedom of thought, conscience and religion), questioning which representation of the human and the female subject is recognised and therefore protected by secular/liberal and Human Rights law. It argues that the semiotics-architectural structure of article 9, which is based on the distinction between faith and its manifestation, not only relies on a particular ontological understanding of the religious subject as well as a specific notion of religion, but it also reveals a distinct relationship between the individual and sovereign power through the division between the public and the private spheres. In light of this, the western debate surrounding the women's veiling overlooks how liberal secularism perceives and defines the religious and legal gendered subject in the modern world, and how this understanding is embedded in and reproduced through the law, which emerges as an instrument for regulating minority religious communities.

Keywords Article 9 of the ECHR · Secularism · Religious expressions · Women's veiling · *Forum internum/forum externum*

✉ Giorgia Baldi
G.Baldi@sussex.ac.uk

[1] School of Law, Politics, and Sociology, University of Sussex, Brighton, UK

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1 Introduction

The issue of Muslim women's veiling in Europe has provoked a passionate debate: from the *affaire du foulard* to the law against the *burqa* and *burkini*, many European countries have forbidden various kinds of Muslim women's veiling in the name of defending secular values and women's freedom. Many of those cases have reached the European Court of Human Rights (ECtHR)[1] which has upheld member states' decisions based on the notion of public order, embedded in article 9 of the European Convention of Human Rights (ECHR). While the banning of the veil in Europe has been analysed through the lenses of gender equality [1–3] multiculturalism [4, 5] and the accommodation of religion in the secular European public sphere [6, 7], little attention has been paid to the way in which the architectural structure of article 9 of the ECHR ('Freedom of Thought, Conscience and Religion') works in the legal discourse that has banned the veil in Europe.

In this article, I problematise this architectural structure and I question which representation of the human and female subject is recognised and therefore protected by secular/liberal and Human Rights law. I argue that not only does the semiotic-architectural structure of article 9, which is based on the distinction between faith and its manifestation, rely on a particular ontological understanding of the religious subject as well as a specific notion of religion, but it also reveals a distinct relationship between the individual and sovereign power through the separation of the public and the private spheres. In light of this, the western debate surrounding the women's headscarf overlooks how liberal secularism perceives and defines the religious and legal gendered subject in the modern world, and how this understanding is embedded *in* and reproduced *through* the law, which emerges as an instrument for regulating minority religious communities.

Article 9 of the ECHR upholds the right to religious freedom while limiting its manifestation when necessary in a democratic society or for reasons of public order. However, the division established by article 9 between *forum internum* (inviolable) and *forum externum* (subject to limitations)[2] presupposes a specific legal and religious subject, conceived as an autonomous abstract individual which is able to separate its internal from its external being.

In order to challenge the internal and external division embedded in article 9, I offer an exploration of Muslim techniques of the body. Drawing on Mahmood's analysis [11] of women of the piety movement in Egypt, I analyse how they perceive their bodies as instrumental in cultivating a specific ethical subjectivity [12,

[1] The establishment of the European Court of Human Rights (ECtHR) in 1959 followed the atrocities of World War II. Its primary mandate is to ensure that states, having ratified the European Convention on Human Rights, adhere to their assumed obligations under the convention.

[2] The division between the *forum internum* and the *forum externum* is part of many legal instruments such as the UDHR, ICCPR. UN Special Rapporteurs on Freedom of Religion have often used the difference between faith and its manifestation when upholding the right of freedom of religion [8].The 'legal significance' of the distinction between *forum internum* and forum externum is also emphasised in art 18 of the ICCPR [9] so that it has become "almost inconceivable to consider freedom of religion or belief without coming across at least one reference to the *forum internum* and *forum externum*"[10, 184].

13]. For these women, habitual bodily acts, such as veiling, become indispensable to achieving specific values that are able to change the interiority of the subject. Hence, while secularism regards religion as a personal belief confined to an individual's consciousness (as per article 9 of the ECHR), my analysis reveals that religious practices can also be integral to an individual's ethical formation. Mahmood's analysis [11] shows that external practices cannot be separated from internal dispositions, linking in this way the internal and the external world of the individual, and revealing the possibility of thinking about different notions of religion and the religious female subject, and thus a different understanding of the relation between life, norms and bodily practices.

Differently, although secularism is often regarded as a neutral framework, the underlying structure of article 9 presupposes a specific religious subject protected by western law: one who experiences religion in a 'secular way' and is able to separate its internal feelings from its external manifestations. By defining the secular and religious subject, article 9 defines specific forms of knowledge and (religious and non-religious) practices and it becomes the framework through which to read and understand the religious, political and ethical spheres of the secular/liberal subject [14]. Consequently, the ongoing debate regarding the women's headscarf fails to acknowledge how liberal secularism understands and defines the religious and legal gendered subject in the modern world, and how this understanding is embedded in and perpetuated through the law. By defining specific forms of knowledge and behaviour, secularism emerges as a normative model that privileges certain forms of religion while neglecting others that are equally legitimate.

From this perspective, the exclusion of many veiled Muslim women from the European public sphere can be attributed to the universalisation of liberal/secular ideals in western and Human Rights law. While my analysis reveals the existence of diverse gendered religious subjectivities, it also highlights how the imposition of western/secular categories within the law perpetuates the exclusion of different religious sensitivities. This exclusion, operated *by* and *through* law, entails the delimitation of a specific public and private sphere and the creation and imposition of a monolithic female law and religious subjectivity which is achieved through the regulation of Muslim women's bodies. Thus the twentieth century liberal/secular project of universal emancipation, through the combination of legal positivism and human rights, in reality works to assimilate differences into secular understandings of law and politics and to control and forge private sentiments in the public sphere; failing to be re-born in the image of modern law's subject can literally result in the removal of the individual from the public sphere. More than secular/liberal toleration, then, the matter of the veil seems to be linked to the European idea of 'assimilation' where prohibitionist laws are justified as mechanisms to ensure that 'outsiders' can be adjusted to fit into secular, democratic western society. In the case of the headscarf ban, the ECtHR has broadened the definition of the *forum internum,* instituting specific criteria of inclusion and exclusion through article 9. This line of inclusion/exclusion, which is embedded in western law from its inception, institutes the double structure of the right of freedom of religion, at the same time private and privative, protective and detrimental [15].

In fact, the right of religious liberty, which is based on the division between public and private, discloses the prerogative of the secular state to guard the individual private sphere to which religious sentiments are assigned. The dichotomous contrapositions between faith and manifestation, inclusion and exclusion from the protective wing of the law, are linked to the dichotomy between public and private encoded in western and human rights understanding of the juridical notion of freedom of religion, which presupposes the paradoxical active interference of the state in regulating religious communities, revealing a specific relation between the individual and the sovereign power. In fact, the historical genealogy of the western notion of religious liberty, predicated upon the division between an inviolable private sphere and a regulated public sphere, involves the (paradoxical) active interference of the state in the private lives of its citizens through the notion of public order. This concept, stemming from Europe's Christian history and intertwined with early concerns about religious diversity in Europe [16], is mirrored in article 9.2 of the ECHR, which restricts the manifestation of religion in the interests of safeguarding public order. Thus, the western notion of religious liberty is not something that helps the individual to be free from state interference: rather, it is a legal vehicle of state interference [16].

Through my analysis, it becomes possible to comprehend the consequences of implementing universal secular values within today's diverse European context. This examination also reveals the contradictions, paradoxes, and limitations of the western/secular/liberal system, which, despite advocating for the principles of secularism and gender equality, generates new forms of secular gender inequality through the forced creation of a monolithic female legal and religious subject and the establishment of a specific relation between the individual and the sovereign power, aimed at maintaining an imagined unity and homogeneity in a still fractured Europe [17].

2 Freedom of Religion at the ECtHR

The increasing presence of Muslims in Europe claiming religious rights has triggered a multifaceted debate at the intersection of law and politics. This discourse has been amplified by factors such as the unsettling wave of terrorist attacks, which has instilled fear and fostered Islamophobia, and the ongoing endeavour to integrate Muslim minorities into the secular fabric of Europe. A key focal point of this debate revolves around the contentious issue of the Muslim women's headscarf, with numerous cases reaching the ECtHR. Notably, prior to 2001, the ECtHR had adjudicated approximately 30 cases related to religious freedom, while the subsequent decade witnessed a substantial surge, with around 60 cases being deliberated upon by the ECtHR between 2001 and 2010. Significantly, a substantial proportion of these cases centred on the wearing of the Muslim veil, underscoring the evolving dynamics of societal, legal, and political considerations surrounding religious

expression in Europe during this period [68].[3] In this section, I will focus on some of the more representative cases decided at the ECtHR which will be useful for my further discussion. Those decisions were based on article 9 of the ECHR, which protects 'Freedom of thought, conscience and religion', including 'freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance'. Article 9.2 poses specific limitations to freedom of religion. Based on article 9.2, 'Freedom to manifest one's religion or beliefs 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'. However, in cases relating to the wearing of the veil decided at the ECtHR, it remains unclear how the banning of the headscarf is 'necessary in a democratic society' and how the simple wearing of the veil could endanger 'public order'.

In the case *Dahlab v Switzerland* [41] a teacher in a primary school in Switzerland was dismissed because she started to wear the veil. Ms Dahlab wore the veil for four years; during that time there was no complaint from her young students or their families. When students asked her why she was wearing long clothing and covering her head, she used to answer that it was to keep her ears warm. After four years, an inspector visited the school and reported that Ms. Dahlab was wearing 'Muslim' garments. The Director General of Public Education asked her to remove the veil: when Dahlab refused, alleging her right to wear the headscarf, she was dismissed. She appealed the decision in the Swiss Court, which found that Ms. Dahlab's request conflicted with the norms of a Christian country and prohibited the wearing of the headscarf based on a law on the state's neutrality. Ms. Dahlab appealed at the ECtHR which, in line with the Swiss Court, pointed out that Switzerland was pursuing a legitimate aim to ban the *hijab* in public schools in the name of gender equality (as the veil was seen by the judges as a chauvinist practice imposed on women by the Koran) and state neutrality, considered an expression of the state's secularism. In the case, the ECtHR found that the principle of *laïcité* could be interpreted in such a way as to allow states to restrict personal freedoms and it emphasised the importance of weighting 'the requirements of the protection of the rights and liberties of others against the conduct of which the applicant stood accused' [41, p. 12]: suddenly, the right-holder woman has become the accused. In fact, instead of weighting the rights of Ms. Dahlab to wear the *hijab* with the rights and freedoms of others, the ECtHR presented an (imaginary) undefined 'other' in need of protection from the 'wrongdoing' of Ms. Dahlab. The Court presupposed that, because Ms. Dahlab was working with young children and the student–teacher relationship is a powerful one, her *hijab* could have 'proselytizing effects'. However, the Court did not find any coercive or proselytizing action carried out by the applicant to induce students to behave or believe in the same way she did. Indeed, it is not clear what kind of 'bad influence' or 'proselytizing effects' Ms. Dahlab was exercising on 'vulnerable

[3] While the context in which those decisions took place is important, this article deals mainly with the architectural structure of article 9 of the ECHR and how this was used by the ECtHR in different cases.

children' since she did not even tell them that she had converted to Islam: in other words, it is unclear how Ms. Dahlab could violate the negative religious freedom of young children when she was not involved in any preaching or missionary activities. Moreover, in four years, it should have been possible to produce further evidence from students who had suffered as a result of her wearing the *hijab*. The weakness of the accusation of proselytism moved against Ms. Dahlab is evident when comparing the case with *Kokkinakis v Greece* [50], decided at the ECtHR. The case involved two Jehovah's Witnesses who were charged with the criminal offence of proselytizing after knocking on the doors of diverse Greek Orthodox priests in order to try to convince them of the truth of their religion in a country where it is illegal. The Court held that the conviction of the Greek national Court against Mr. Kokkinakis was a breach of article 9 of the ECHR because the simple attempt to convince others to convert to a religious belief cannot be considered a breach of freedom of religion [50].

Sahin v Turkey [59] is a particularly controversial case due to the narrow interpretation of the notion of freedom of religion given by the Court; the imposition of a radical form of secularism; the implications on Muslim women's right to education; and the inadequate application of the doctrine of the margin of appreciation.[4] In 1998, Istanbul University released a circular prohibiting students from wearing the headscarf (along with 'long beards') during lectures and examinations. A few months later Sahin, in her fifth year of medical school at Istanbul University, was denied access to a written examination because she was veiled, and disciplinary measures were imposed as a result of her failure to comply with the circular. As no university in the country allowed the wearing of the veil, Sahin was forced to move to Vienna University in order to complete her studies. She applied to the Istanbul Administrative Court, claiming her right to wear the *hijab* in the university; the Court, however, dismissed her application. The case reached the ECtHR in 2005 when the Grand Chamber decided that the university's refusal to allow her to wear a headscarf did not violate article 9 of the ECHR on freedom of thought and religion and confirmed the decision of the Fourth Section of the Court of June 2004. In reaching this conclusion, the Court considered (i) whether the ban represented a breach of article 9, (ii) whether the ban was prescribed by law, and (iii) whether Turkey pursued a legitimate aim, (iv) which was necessary in a democratic society. The ECtHR found that the ban on wearing the veil applied by the university was sought to "preserve the secular nature of the institution concerned" [59, para 116] and so was considered admissible. In the *Sahin* case, the ECtHR showed a confused reasoning: although the Court stated that there was no interference with article 9 (1), the Commission considered whether the interference was justified under article 9 (2). The Court found that the interference was motivated by two main principles: secularism and gender equality. According to the ECtHR, the decision of Istanbul

[4] The margin of appreciation plays an important role in remitting certain kinds of judgements to democratically elected officials who are said to know the particular context of their country better. It is usually employed by the ECHR when there is not a formal European consensus on particular topics or where the issue is particularly controversial [63].

University to ban the *hijab* was motivated by the need to protect the rights of others and public order, in accordance with article 9 (2), which justifies restrictions on freedom of religion. However, based on article 13 of the Turkish Constitution, fundamental freedoms and rights can be restricted only by a parliamentary Act and not by an institution such as a university. Despite the absence of statutory bases to ban the headscarf in universities, the Court accepted as a legal basis the transitional Sect. 17 of law No. 2547 which states that "choice of dress shall be free in institutions of higher education, provided that it does not contravene the laws in force" [59, para 88]. Through this choice, it was not difficult for the Grand Chamber to understand the restriction on wearing Islamic headscarves merely as an internal rule of Istanbul University, rather than a limitation of personal freedoms [69]. By stressing the principle of secularism, the Court not only limited Sahin's individual rights of freedom of religion, but it also assumed the duty to define which Islamic symbol was appropriate in Turkish universities: Muslim students could "manifest their religion in accordance with habitual forms of Muslim observance" [59, para 159]. The Court, however, failed to explain which religious duties were allowed and why the headscarf could not be considered an 'habitual' Islamic practice: hence, the argument was quite weak in its legal reasoning [70].

The case *Dogru v France* [61] concerns the expulsion of a young girl because she refused to remove the veil during physical education class. In 1999, before the 2004 law on banning the headscarf in public school entered into force in France, Ms. Dogru failed to participate in 38 physical education classes because her *hijab* was not allowed: the school teacher claimed that she was denied participation because of safety reasons, but she refused to answer on how the veil could endanger Ms. Dogru's or other students' safety [61]. When the school expelled her, she tried to compromise by asking to wear a hat, but her offer was refused. The ECtHR did not find any violation of article 9 of the ECHR and upheld the decision of the school and the French government to expel the student. The Court added that even if a violation of freedom of religion had been found, the interference was still justified by prescribed law, or by a legitimate aim necessary in a democratic society. The ECtHR found that, although at the time of the facts no law prohibited the wearing of the veil, the expulsion reflected domestic laws based on non-binding ministerial circulars, and that the aim was legitimate and necessary to protect the freedom of others and public order in the school [61]. However, as in other cases decided at the ECtHR, the Court never explained how the mere wearing of the veil could create a threat to public order or the freedom of others, nor why Ms. Dogru was not allowed to wear a hat in physical classes. The Court found that a limitation of Ms. Dogru's rights was necessary to preserve the secular character of French public educational institutions, but failed to explain how the veil could violate the principle of secularism. Despite the lack of empirical proof of the 'danger' of Ms. Dogru's veil and the absence of a national law that forbade the veil at school at the time of the facts, the ECtHR upheld the decision of the French national Courts to exclude Dogru from school because of her failure to respect the principle of *laïcité.*

Finally, the case *Lautsi v Italy* [40], in which the applicant complained that the crucifix affixed in a state school's classroom was a breach of her children's negative freedom, is particularly revealing when compared to the discussed decisions. In

the case, the ECtHR did not found an infringement of article 9. Instead, the ECtHR defined the crucifix as an 'essentially passive symbol'[5] which 'cannot be deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities' [40, para. 72]. While the majority of judges believed that the presence of crucifixes in classrooms was within the state's discretion, the Court ensured that there was no indoctrination by considering factors like the absence of compulsory Christian teaching. However, it is the connotation of the crucifix as an 'essentially passive symbol' that allowed the Court to establish that the crucifix is deemed not to compromise the principle of neutrality [40, para 72]. Despite acknowledging that the crucifix is primarily a religious symbol, the Grand Chamber linked the crucifix to Italian culture and identity, introducing ambiguity regarding the Italian government's assertion that the crucifix, as a symbol, goes beyond religious connotations, representing values such as liberty, human rights, and democracy, commonly associated with the modern secular state. Hence, while the veil has been constructed as symbolising religious radicalism and gender inequality, the crucifix emerges as a symbol of secular values.

These sentences show a re-definition of the balance between state neutrality and the right to religious liberty and between the public and the private sphere operated by the law. Hence, as I will show in the next part, what is missed in the contemporary discourse regarding the veil is a deep problematisation of secular forms of power that allows the secular state to introduce restrictions to personal freedoms without perceiving them as violence but as a safeguard of the place assigned to religion [71].

3 In Ward and Outward

After the banning of the headscarf in France in 2004, Laïdi, a prominent French political scientist, stated that 'there are a thousand ways for a Muslim woman who aspires to wear the veil on the inside without wearing it on the outside' [18, p. 159]. Her words discloses a secular understanding of religion as located in the conscience of the individual and so detached from its external manifestation, reiterating the dichotomy between *forum externum* and *forum internum*, public and private.

This understanding is mirrored in article 9 of the ECHR, which makes a distinction between faith and its manifestation. In fact, article 9 upholds the right of religious freedom while limiting its manifestation when necessary in a democratic society, for public order (as in the cases related to the veil), or for the protection of the rights and freedoms of others. According to the ECtHR, religious freedom is not

[5] Notably, while the Court saw the crucifix as a 'passive symbol', for the applicant the crucifix was "a symbol of the dominant religion" [40, para 41] which "gave material form to a cognitive, intuitive and emotional reality which went beyond the immediately perceptible" [40, para 42]. In this view, the crucifix cannot be seen as a 'passive symbol' as it is able to convey messages. Indeed, as I have written elsewhere, the interpretation of a sign cannot be controlled or prescribed [42].

limited to belief, but it also extends to its manifestations and is "one of the foundations of a democratic society" [50, para. 31].

Although the ECtHR does not have the right to define what religion is, as it would be a violation of the principle of separation between state and religion [19],the distinction between faith and its manifestation, *forum internum* and *forum externum,* made by article 9 of the ECHR discloses a specific (western/secular) definition of religion and the religious subject. While the ECtHR has left the duty to define what religion is to member states,[6] it simultaneously promotes a specific understanding of religion as an individual, voluntary, private, and intellectual conviction: something that the individual can choose to keep at home. This understanding derives from the development of western secularism, whereas religion comes to be understood as a trans-historical and transcultural phenomenon, an illogical and un-real belief, a myth [44]. Cavanaugh observes that "religion in modernity indicates a universal genus of which the various religions are species: each religion comes to be demarcated by a system of propositions; religion is identified with an essentially interior, private impulse; and religion comes to be seen as essentially distinct from secular pursuits such as politics, economics, and the like" [as cited 45, p. 286]. This western liberal understanding of religion as a privatised notion removed from the public sphere is based on a Protestant Christian understanding of religion as disembodied, as an inner state, rather than outward practices [46, p. 508].

It follows that the normative distinction between faith and its manifestation, which is taken as necessary in the legal reasoning [20], presupposes a religious individual whose faith is a simple private matter distinguishable from its manifestations (such as symbols, rituals, etc.). In this view, the law establishes and sustains a specific post-Protestant conceptualisation of religion as located in the conscience of the individual and a religious subject able to separate its internal from its external world; a secular subject[7] constituted *by* and *through* the western/secular (privatist) definition of religion given by article 9 of the ECHR as solely located in the conscience of the individual, and so separated from its manifestation. The secular subject is formed by an internal truth which is represented by (but not generative of) its outward life: it follows that "a secular person is someone whose affective-gestural repertoires express a negative relation to forms of embodiment historically associated with (but not limited to) theistic religion" [14, p. 638].

To this western/secular understanding of religion and the religious subject, I juxtapose a non-secular/non-liberal understanding of religion provided by the work of Mahmood, Asad, and Hirschkind.[8] Mahmood's work [11] with the women of the

[6] In *Otto-Preminger-Institut v Austria* [43, p. 50], the ECtHR specified that 'it is not possible to discern throughout Europe a uniform conception of the significance of religion in society'.

[7] For Hirschkind [14, p. 641–642], a secular individual 'is one that depends on, one that cannot be abstracted from, the secularist narrative of the progressive replacement of religious error by secular reason—what Asad calls the "triumphalist narrative of secularism". A secular sensibility is one considered from the standpoint of its contribution to that progressive narrative'.

[8] It is worth noting that Muslim women wear the veil for various reasons and to many effects. Through the employment of the aforementioned authors, I do not intend to essentialise the practice of veiling, nor do I claim that all Muslim women experience religion in the same way. Instead, my aim is to offer an

piety movement in Egypt is particularly revealing. The aim of the movement is to educate Muslims on the proper religious duties (such as worship, fasting, etc.) and to train them in Islamic principles and virtuous behaviour as a condition for the acquisition of piety. In order to explain the relation between inward and outward dispositions of this movement, Mahmood takes into consideration the Latin term *habitus* (translated in the Arabic term *Malaka),* which is defined as the repetition of a specific performance that has the power to discipline and to shape the internal feelings and emotions of the individual (Lapidus, 1984). 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' [11, p. 157].[9] Using the Greek term 'paideia' which indicates a 'physical, intellectual, and moral cultivation of the person' [21, p. 168], and drawing on the Aristotelian understanding of *habitus* as a repeated performance that creates in the individual a particular disposition, a way of life, as a result of an habituation [22], Asad [23] defines *habitus* as a means of structuring the subject through techniques of the body aimed at inculcating specific virtues and values. Hence, *habitus,* unlike *habit* which refers to the repetition of specific acts, is a means through which the subject acquires a moral virtue and is linked to the discipline of the body. Since *habitus* aims at ordering the soul, it is implemented for the sake of the performer, not of the audience [21]; as Mahmood [11, p. 29] argues, 'the importance of these practices does not reside in the meanings they signify to their practitioners, but in the work they do in constituting individuals: similarly, the body is not a medium of signification but the substance and the necessary tool through which the embodied subject is formed'. However, as Asad [21, p. 193] highlights, the acquisition of specific dispositions is not achieved through the mere repetition of specific practices: discipline is 'a complex learning process in which discourse, emotion, desire, and the body are involved in different combinations and sequences'. As *habitus* is obtained through discipline and human industry, it 'exist[s] only when someone has actively formed it' [24, p. 96].[10] This approach emphasises the permanence of the link between outward behaviour and inward disposition [11] as it refers to the way in which certain acts leave a mark upon the interiority of the subject. *Habitus*, then, is a way of shaping one's own interiority through embodied worldly practices that direct one to a particular form-of-life: it is a habituation through which the subject directs its feelings and desires in order to acquire moral characteristics [11, pp. 25, 26].

Footnote 8 (continued)
alternative semiotic understanding of the link between the internal and external aspects of an individual's life.

[9] *Italics added.*

[10] This resonates with Foucault's understanding of ethics. Drawing from Aristotle, for whom ethics is a set of practical activities whose value resides not in what they mean but in what they do, Foucault [25, p. 28] conceives ethics as not so much linked to knowledge, but to practices able to modify the soul. Colebrook names it a 'positive conception of ethics', which expands beyond notions of norms, justification, legitimation, and meaning, encompassing the consideration of practices, individual selves, bodies, and desires that both shape and are shaped by ethics.

The women involved in the piety movement perceive their bodies as a tool for attaining a particular form of ethical subjectivity [13]. Those women believe that habitual bodily practices, such as wearing the veil, are essential in achieving specific values able to change the interiority of the subject. The veil, for them, serves as a means to acquire the virtue of modesty [11]. This understanding of religion and religious practices emphasises the affective, emotional, and non-communicative aspects, and does not depend upon a specific discursive tradition, as it focuses on the individual's self-cultivation [27]. Consequently, for many Muslim women, external bodily practices are indispensable to develop specific ethical dispositions, becoming intrinsic to their sense of self [13]: practice, in this context, is 'understood not so much as an instantiation of an ideology or structure… but as a set of embodied capacities and dispositions that one acquires through labor in order to become the willing subject of a tradition' [27, p. 225]. Hence, it is through the shape that specific ethical practices take, that it is possible to analyse ethical subject formation.

Therefore, in contrast with the secular notion of religion as a purely personal belief located in the consciousness of the individual, my analysis highlights that religious practices can also be integral to an individual's ethical formation; through veiling, many Muslim women perform a specific emotional/non-cognitive relation between norms, their veiled body, and life which has been rendered possible thanks to a notion of religion that embodies a 'form-of-life' [28] beyond the western/secular/liberal dichotomous categories on which western law is based. To comprehend veiling as a speech act capable of transforming the inner self, it is necessary to consider a different relationship between the external manifestations of the self and its internal beliefs (state of the soul). Mahmood's work shows that inward and outward dispositions are not separated and 'belief does not precede (or is the cause of) these outward devotional practices but is the product of their apt performance' [27, p. 227].[11] By contrast, the subject protected by western and Human Rights law is one who acts in a secular way, by which I do not mean simply non-religious practices, but practices that have been

> discursively identified and valorized through the discourse of secularism (as distinct from the political doctrine) […]. [A] practice is not secular because it stands in a particular relation to the political doctrine of secularism. Rather, the historical discourse of the secular, as predicated on the opposition religious–secular, is integral to the grammar of the concept [14, p. 639].

By giving a specific definition of the religious subject, secularism emerges as a 'constellation of institutions, ideas, and affective orientations that constitute an important dimension of what we call modernity, [a] concept that brings together certain behaviours, knowledges, and sensibilities in modern life' [29, p. 25], defining specific forms of knowledge and (religious and non-religious) practices and it

[11] Western anthropologists distinguish between rituals and conventional behaviour, and between spontaneous emotion and its performance [30, 33, p. 34], so that rituals are not seen as spontaneous emotions, but as practices where genuine emotions are controlled. In contrast, Mahmood's [11] work shows that veiling is a means to pious behaviours as well as an end.

becomes the framework through which to read and understand the religious, political, and ethical spheres of the Christian/secular/liberal subject [14]. The blindness of the ECtHR concerning different understandings of religion and religious practices indicates that secularism protects an individual who complies with a secular mode of experiencing religion [32] and who is able to separate its internal from its external being.

The prerogative of western and Human Rights law to determine and control religious symbols in the public sphere, thereby blurring the boundaries between the secular and the religious sphere, is made evident by the obsession of European judges with defining whether veiling is a religious or a political symbol: once veiling has been defined as a practice indifferent to (proper) religious doctrine, it is easy to bring it under the state's regulation without perceiving the ban as an infringement of the right of religious liberty [48]. In fact, the headscarf ban has not been viewed as a direct infringement on individual freedom of religion, as it is assumed that veiled women can still maintain their beliefs within the private sphere. Consequently, while the ban has been justified based on the preservation of public order, the conceptualisation of religion as a private matter has allowed judges and politicians to perceive restrictions on veiling not as an infringement of the freedoms of Muslim women [49], but rather as a normative practice that regulates the outward expression of an internal state. However, if European democracies are founded on the principle of pluralism,[12] it becomes crucial to acknowledge that religion is not universally the same and its definition very much depends on different cultures and historical periods [47]. Indeed, as Asad [47, p. 220] argues, the

> problem with universal definitions of religion is that by insisting on an essential singularity, they divert us from asking questions about what the definition includes and what it excludes–how, by whom, for what purpose, and so on. And in what historical context a particular definition of religion makes good sense.

My analysis reveals the limits of secularism in understanding non-Christian religions, and how secularism constructs religion by differentiating between action and belief. European courts have defined veiling either as a religious obligation or as a symbolic identifier of Muslim identity, reflecting a secular conception of religion as a personal belief and treating traditions as 'a cognitive framework, not as a practical mode of living, not as techniques for teaching the body and mind to cultivate specific virtues and abilities that have been authorized, passed on, and reformulated down the generations'[47, p. 216]. In other words, the emphasis on belief within secularism obfuscates the material aspects of religious practices, and protects an individual who complies with the principle of secularism and with a secular mode of experiencing religion based on the requirements and sensibilities of liberal governance [52]: in this view, 'the political solution that secularism proffers […] lies not so much in tolerating difference and diversity but in remaking certain kinds of

[12] In *Kokkinakis v Greece,* [50], para 31], and in the case of *Manoussakis and Others v. Greece* [51, para 44], the ECHR clearly stated that pluralism is an important feature in a democratic society.

religious subjectivities (even if this requires the use of violence) so as to render them compliant with liberal political rule' [53, p. 328]. In the context of the headscarf ban, the notion of the legal subject as divided between *the forum externum* and *forum internum* has allowed Human Rights law to exclude a specific category of individuals (veiled Muslim women) while privileging others, thus creating a distinction between those who deserve the protection of article 9 and those who do not. Far from being neutral, article 9 operates in such a way as to define specific religious and non-religious forms of knowledge and behaviour and to exclude others. In light of this, the separation between public and private, secular and religious, creates not only an understanding of how private and public life should be lived and experienced, but also a specific imagination which mediates people's identity in the 'modern' world [29]. Therefore, secularism is not a neutral position but, rather, it is a 'normatively prescriptive model that favours certain forms of modern religion at the expense of others that are equally legitimate' [54, p. 497].

4 Article 9 and the *forum internum*

Following the architectural structure of article 9, the ECtHR's rulings uphold the inviolability of *the forum internum* as the locus of religious beliefs, while limiting the *forum externum* in the name of public order. However, it is unclear whether the law protects beliefs that are autonomously chosen by the individual or beliefs that are unchosen [33].

The confusion about what article 9 protects is evident in the rhetoric of choice at work in the *Begum* case [34] which concerns the right of a young girl to go to school with a *jilbab*,[13] and not a *Shalwar Kameez*,[14] as required by the school. Although heard in the UK Supreme Court, the case is centred around article 9 of the ECHR. Throughout the proceedings, the claimant was initially viewed as someone needing to be rescued from her family and community, and then as a person who should pay for her choice (wearing the *jilbab* and sustain her interpretation of Islam). The claimant, then, oscillated from a person who is subjected to the backward religious traditions of her oppressive family (and so in need of being saved), to one who chooses her own belief (and so she should pay for her choice); from a person protected by western law, to one from whom society must be defended. This confusion is also clear in two cases decided at the Court of Justice of the European Union (CJEU) in 2017. Both cases concern the right to wear a veil in the workplace [35, 36]. In the *Bougnaoui* case [36, para. 118], Advocate General (AG) Sharpston stated that

> to someone who is an observant member of a faith, religious identity is an integral part of that person's very being […] it would be entirely wrong to

[13] A triangular fabric secured under the chin that covers the body from the head to below the shoulders.

[14] A long colourful tunic wrapped over a pair of trousers.

suppose that, whereas one's sex and skin colour accompany one everywhere, somehow one's religion does not.

Differently, AG Kokott, in *Achbita* [35, para 116], argued that 'the practice of religion is not so much an unalterable fact as an aspect of an individual's private life, and one, moreover, over which the employees concerned can choose to exert an influence […] an employee may be expected to moderate the exercise of his religion in the workplace'.

In spite of this apparent divergence, both cases link religious liberty and individual autonomy, thereby reinforcing the liberal notion of religion as a choice made independently by individuals. AG Sharpston associates autonomy with religious freedom and defines beliefs as detached from communal rituals and symbols, aligning with the liberal perspective emphasised by various scholars who underscore the significance of individual autonomy in establishing minority religious rights [37, p. 41]. This line of reasoning echoes Kymlicka's viewpoint [37], for whom the meaning of individual autonomy lies in the individual capacity to maintain one's cultural institution and way of life: this inevitably expands the range of options among which an individual can choose by exercising its autonomy. The *Achbita* case [35], in which the CJEU's understanding of religious freedom as a means to protect the autonomy of an individual's beliefs, inevitably leads to the idea that it is not religion per se, but the ability of the individual to 'manifest' a religious belief in a specific way that is at stake [39, 67]. It follows that the task of European Courts is not so much to identify what religion is and to protect it, but to ensure that a specific liberal/secular way of understanding and experiencing religion is protected by article 9 [32].

Returning to *Kokkinakis v. Greece* [50], what is of particular interest in this case is the opinion of two judges: Judge S. K. Martens and Judge N. Valticos. The first, echoing the majority, restated that freedom of religion protected by article 9 (1) is 'absolute': this makes no room for the state to interfere with this right in order to maintain a strict neutrality [50, para 13–14]. He rejected the reasoning of the Greek government that the majority of the population is Greek Orthodox and that this is central to the Greek identity, and criticised the majority of judges for not addressing the danger of discriminating against religious minorities, preferring to ambiguously distinguish between 'proper' and 'improper' proselytism [50]. Differently, for Judge N. Valticos, dissenting, freedom to manifest one's religion does not include 'alter[ing] the religion of others' [50, p. 2] and defined Jehovah's Witnesses as a 'sect […] involved [in] […] systematic attempt[s] at conversion and consequently an attack on the religious beliefs of others' [50, pp. 9–10]. Hence, the case did not involve the limitation of freedom of belief based on public order, as for the other judges, but a conflict of rights: on the one hand, the right of the proselytiser to manifest his religion, while on the other, the freedom of the Greek orthodox priest to maintain his belief without being subject to proselytism. In privileging the right of the orthodox priest, Judge N. Valticos addressed a specific notion of public order: 'one that goes not to the question of limitation of the right in the *forum externum* but to the very nature and scope of the right itself in *the forum internum*' [58, p. 149].

The confusion regarding what article 9 protects is also mirrored in the comparison between the case of *Lautsi v Italy*, [40], and *Dahlab v Switzerland* [41]. In the

Lautsi case [40], the Grand Chamber constructed the crucifix as a 'passive symbol', a representation of an *inner state*, which does not infringe the *forum internum* as it does not influence pupils' internal beliefs. Conversely, Dahlab's veil was considered a proselytising symbol that might infringe the pupils' negative freedom, despite her never having told her students that she had converted to Islam. In the *Lautsi* case [40], the Grand Chamber constructed the crucifix as a 'passive symbol' which does not infringe the *forum internum* of children as it could not be 'deemed to have an influence on pupils comparable to that of didactic speech or participation in religious activities' [40, para 72]. For this reason, for the Grand Chamber there was no need to proceed to a public order limitation based on article 9 (2). In the case, the Court stated that

> there is no evidence […] that the display of a religious symbol on classroom walls may have an influence on pupils and so it cannot be asserted that it does or does not have an effect on young persons whose convictions are still in the process of being formed [40, p. 66].

On the other hand, in the case of *Dahlab v Switzerland*, the Court stated that 'it is very difficult to assess the impact that a powerful external symbol such as the wearing of a headscarf may have on the freedom of conscience and religion of very young children' [41, p. 13].

So, while in the *Lautsi* case [40] the Court established that the crucifix did not endanger the pupils' negative freedom or public order, as Lautsi's children remained free to believe in any religion from inside, Dahlab's veil, another 'passive symbol' as she did not carry out any proselytising activities, was considered a 'powerful external symbol' that could endanger the *inner state* of pupils as well as the public order of the school. The distinction the ECtHR made between the veil and the crucifix shows that the Court acted as a theologian in defining which religious symbol could interfere with the *forum internum* of others. What is worth noting in these comparisons is not only the reiteration of western binary oppositions through the division between the *forum internum* and *forum externum*, beliefs and action, but different notions of religion: one locates religious beliefs in the private sphere, while the other understands religion as a discursive tradition that informs the subject's interiority [33]. This difference between the veil as linking the interiority and the exteriority of the subject, and the crucifix as related exclusively to the subject's *forum internum*, is based on a prior normative understanding of religion applied by the Court, which entails a prescriptive notion of the self and collectivity and has important implications for how individual and collective religious life is lived and performed in secular Europe [33].

The confusion about the *forum internum* is linked to the paradox of the *forum externum*: while the *forum internum* (a category of exception from state intervention) is linked to the *forum externum* (the right to manifest a religious belief), the limitation of the *forum externum* is based on an exception itself (public order). This paradox, in turn, creates different notions of public order which, in the case of the headscarf ban in Europe, is translated into the ambiguity about whether the state of exception is applied to the *forum internum* or to the *forum externum*. As the division between *forum internum* and *forum externum*, public and private, presupposes the

active interference of the state to delimit the sphere of religion either as 'an absolutely protected category in the *forum internum* or as a category of simultaneous recognition and regulation in the *forum externum*, [t]he state […] always decides what the scope of religion should be in the political order.' [58, p. 153].

5 The Public/Private Divide and the Notion of 'Public Order'

In relation to cases involving religious freedom, there has been a shift in the position of the ECtHR. Previously, the Court held the view that 'the state has no direct role to play in the religious life of believers' [56, p. 19], suggesting that religious communities and the public sphere should remain separate. However, more recently, there has been an increased emphasis on state neutrality and the preservation of public order, granting states the authority to determine which practices qualify as 'religious' and so protected by the right to religious liberty. According to the ECtHR's perspective, it is solely the prerogative of member states to establish an appropriate framework for accommodating religious diversity while upholding the principle of secularism. As secularism is seen as the only viable system for safeguarding individual autonomy 'from others and from state power through its articulation of the autonomy of the state from cultural and religious authority' [p. 153], the state has the power to 'either tolerate or ban particular cultural differences without being defined as partial' [57, p. 574].

In the context of the headscarf ban, article 9.2 has been employed to govern both majority and minority religious rights through the notion of public order: a concept that changes from place to place and is linked to European early preoccupation with religious plurality [58]. Since the notion of public order is associated with the notion of public interest, public sentiments and morality, it is a subjective concept that varies in its interpretation and emerges as a tool of sovereign power between norms and exception [52].[15]

Although European judges have not presented any objective proof of the veil's danger to the public order of European democratic societies, they have constructed veiling as an element capable of 'disrupting societies', an ostentatious, un-necessary, and unacceptable manifestation of a religious internal belief, while defining what is perceived as a 'social harm' in modern western societies. In the case *Sahin v Turkey* [59], for instance, the veil was seen as a religious symbol in contrast with Turkey's secular values; in the *Begum* case [34], decided in the multicultural UK, the *jilbab* worn by the claimant was understood as a symbol of radical Islam, in contrast with the *Shalwar Kameez*, considered the 'sign of' a 'tolerant' Islam; while in the case of *Dahlab v Switzerland* [41], the 'illiberal values' of the claimant's headscarf were seen in contraposition with gender equality and women's freedom.

[15] The concept of public order is not static; instead, it evolves within specific contexts and historical periods. It represents a notion of domestic sovereignty that allows states to supersede international law in situations where a norm conflicts with local legislation or public morality [52].

Most of the ECtHR decisions were based on the idea that 'the measure pursued the legitimate aims of protecting the rights and freedoms of others and of protecting public order' [59, para. 99] and so the banning of the veil was 'necessary in a democratic society' [41, p. 13]. However, there is no indication provided as to how the veil could pose a threat to the freedom of others or public order, nor is there an exploration of whether limiting the claimants' right to freedom of religion is a necessary measure to achieve the state's objective. In the case of *Dahlab* [41], there was no evidence to suggest that her veil had disturbed a number of children or that she had engaged in proselytizing activities, nor did the ECtHR explain how wearing the veil could undermine the principle of tolerance and non-discrimination. Similarly, in *Dogru v France* [61], no justification was found of the danger of the veil during gym classes, while in the *Sahin* case [59] it remains unclear how the claimant could have endangered the peace and public order of the university by wearing a headscarf, or how wearing a veil could pressure other students or endanger the principle of secularism. What becomes evident in these cases is that the conflict does not lie between the claimant's right to freedom of religion and the freedom of conscience of others, but rather between the claimant's right to religious liberty and the preservation of public order [16]. The test of proportionality and necessity was never applied to the alleged risk posed by the veil to public order, as it is apparent that not all religious symbols are regarded as threats to public order. This is evident in the comparison between the *Dahlab* [41] and the *Lautsi* case [40]. While the presence of a crucifix is not deemed to pose a threat to public order, the Court's approach in cases involving the wearing of the veil focuses more on balancing abstract concepts (religion v secularism, democracy v the veil's symbology etc.), rather than addressing specific conflicting rights and interests. According to the legislation of the European Convention on Human Rights, the ECtHR is expected to apply the doctrine of the margin of appreciation to strike a balance between national authority and individual rights. However, in cases involving the wearing of the veil, the ECtHR goes further, uncritically assuming that the veil would automatically give rise to religious conflicts. Clearly, the matter of public order has been used and abused by the Court. When it comes to cases involving the display of religious symbols, the ECtHR showed inconsistency in applying the margin of appreciation doctrine, redefining the notion of 'necessity' as a subjective concept which no longer requires proof that a specific symbol poses a genuine threat to public order and the common good. In those decisions, it seems that for the Court the problem was not the public expression of religious liberty, but the headscarf per se. By defining the veil as a dangerous threat to the peace of a society and the crucifix as a cultural symbol which represents values of tolerance, the Court distorted (or excessively expanded) the notion of public order, rendering necessary a sovereign intervention to ban the veil, as is clear in the comparison between the *Dahlab* [41] and the *Lautsi* case [40], where the ECtHR acted as a theologian in defining which religious symbol could interfere with the *forum internum* of others.

In this view, the rule of religious toleration established by western secular tradition is based not on a principle of 'personal conscience' or the individual right to manifest one's own religious belief, but on the notion of 'worldly harm'. For McClure [62, 380],'the factual character of worldly effects […] constitutes a

standpoint from which all permitted practices of worship are rendered equal, independent and politically indifferent, a distinctly civil perspective that deploys empiricism as a mechanism for effectively converting religious ‘‘difference’’ into religious ‘‘diversity’’’.

In other words, 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 [62, p. 387].

From this perspective, the concept of toleration towards diverse religious beliefs is rooted in the preservation of public order rather than the recognition of individual rights. It follows that the notion of freedom of conscience and religion does not render the *forum internum* immune from the state’s intrusion, nor does it give special value to the importance of religious plurality (often seen as potentially dangerous) [73]. Rather, it is the (exceptional) notion of public order that assures the sovereign’s right to expand its power and to limit the individual’s private sphere [33]. In the case of the headscarf ban, the limitation of the *forum externum* is based on the notion of public order which, in turn, reflects majoritarian norms and so it suggests that the notion of religious liberty is used to control and discipline citizens who escape from the majoritarian norms [58]. The paradox is that while minority religious communities try to be recognised by legal and political institutions, those institutions marginalise and reorganise their religious life. Hence, ‘the conditions of their empowerment are also those of their vulnerability’ [64, p. 446] as the right of religious freedom does not protect the individual from state power; rather, it protects majoritarian religious sensitivity while shaping and re-organising minority religious communities [33]. In other words, while the secular state claims to treat all citizens equally regardless of their religious beliefs, it simultaneously restricts the private lives of certain individuals by prioritising the sensitivities of the majority. This is accomplished through the establishment of specific criteria of inclusion/exclusion through the definition of the *forum internum* as solely located in the conscience of the individual. In this view, secularism emerges as the force of sovereign power to manage and organise different religious sensitivities, assigning to them their proper space while encouraging a specific ethical sensitivity at the expense of others through ‘a discursive operation of power that generates these very spheres [public and private], establish[ing] their boundaries, and suffus[ing] them with content, such that they come to acquire a natural quality for those living within its terms’ [33, pp. 2–3]. This shows that in western secularism it has become impossible to think about religious practices and communities without the mediation of the state. Hence, it is through the indeterminacy of the meaning of the notion of public order encoded in the right of freedom of religion, along with the distinction made by article 9 between *forum internum* (inviolable) and *forum externum* (regulated by the state), that the law presupposes the active interference of the state into the private life of the individual.

While secularism purports to maintain a strict separation between the public and private domains, it nevertheless exercises control over the private lives of individuals. This paradox shows the prerogative of the modern political order in which the state does not fix but continually re-establishes the lines between the private and the public divide on which it is based by organising and managing different sensitivities and religious creeds [16]. For Agrama [52], this paradox discloses a fundamental characteristic of secularism, namely its indeterminacy and instability. He asserts that this instability is ensured by the impossibility of drawing a clear-cut dividing line between the secular and the religious spheres. This is not to be seen as a paradox, but as the condition for the exercise of secularism:

> for the peculiar intractability of secularism lies not only in the normativity of its categories, but significantly, in the indeterminacies it provokes. Indeterminacies that powerfully contribute to the continually felt gap between the ideals secularism promotes and the realities that it establishes [52, p. 500].

In other words, secularism itself continuously blurs and blends the line between the secular and the religious spheres, rendering precarious the same categories that it establishes. In the case of the headscarf ban, through the notion of public order the law blurs the line between public and private, re-fashioning the public sphere and protecting the sensibility of the majority in a way that undermines the western abstract notion of equality but also the public/private division on which is based [52]. More than pursuing equality, tolerance, and democratic values, the notion of public order has assured the secular state to define what is public and private, secular and religious; this, in turn, requires an abstract articulation of what religion is. By defining religion, the secular state also defines the appropriate religious practices of the secular subjects, authorising specific sensibilities while disciplining different traditions to conform to the abstract western/secular/liberal notion of religion and the religious/secular subject [52]. This process, however, collapses politics into religion [52] and restricts individual liberal rights, resulting in the exclusion of diverse subjectivities. From this perspective, secularism emerges as a specific technology of governance; a mechanism employed by the state to exert control over the private lives of its citizens by regulating visible religious practices. According to Foucault [25], the regulation of bodily practices through legal and political authority is a modern disciplinary technique. From this viewpoint, the regulation of Muslim women's attire can be seen as a fundamental tool of the contemporary neoliberal form of governmentality. Secularism, widely used to justify the normative control of women's bodies, becomes one technology of control employed by the state to discipline (different/non-homogeneous) bodies. In this view, secularism is used to keep women's body under the control of the state: in fact, from a secularist point of view, religious symbols mark differences in bodies that are supposedly neutral, rational and abstract. This technology of power is evident in European rulings that prohibit the wearing of veils, and it is productive of political and legal polarisations that make possible the existence of an inclusionary/exclusionary pattern which is translated into the dichotomy veiling/un-veiling, where only lives that are considered significant are protected by the law.

6 Conclusion

In this article, I have tried to problematise the dichotomy between *forum internum* and *forum externum,* private and public, embedded in article 9 of the ECHR, at the basis of European juridical decisions to ban the veil.

Those decisions show that the imposition of a specific religious and legal subject has been rendered possible through the division between faith and its manifestation made by article 9, which presupposes an individual split between its internal and its external world. However, when examining Muslim religiosity, it becomes evident that religious practices should not be reduced to mere rituals performed by individuals. Instead, they encompass a way of life, a complete embodiment of a religious and ethical subjectivity [11], linking in this way the internal and the external world of the individual. In fact, many Muslim women articulate an understanding of religious practices that goes beyond the western secular dichotomy of inward and outward, revealing that the external practices of the individual cannot be separated from its internal being.

The ECtHR's failure to acknowledge different understandings of religion and religious practices reveals that, in the liberal secular west, the subject of law—the citizen—possesses the autonomy to express his/her identity only when it aligns with Christian/secular/liberal understandings of 'secular' and 'religious'. By imposing a specific notion of the female legal and religious subject, secularism has overlooked the ever-changing historical, social and religious meanings symbolised by the veil, giving to Muslim women the 'free' choice to be assimilated into western societies or to disappear from the public sphere [32]. By defining religion and the religious subject through article 9 and through the lens of western/Christian/secular notions of freedom of religion, western law has un-veiled Muslim women, to re-veil them with the mask of the abstract western/secular/liberal individual: one who is defined and constituted *by* and *through* the force of the law. Hence, while, on the one hand, article 9 is considered neutral thanks to its (supposed) ability to balance the right of the individual's freedom of religion with the notion of public order, then on the other, it encodes specific (western/liberal) assumptions about religion and the religious subject that particularly fit with the potentiality of exclusion intrinsic in western and Human Rights law [32].

In light of this, the European legal decisions concerning the practice of veiling emerge as a key to understand the extraordinary normalising and universalising power of secular/liberal forces. When these forces are translated into to a western and human rights architectural juridico-semiotics structure, they inevitably lead to the exclusion of different forms of humanity, giving rise to specific sensitivities, knowledge, and behaviours, as well as a distinct legal and religious subject. Rather than the protection of a universal humanity, what emerges from European decisions to ban the veil is the imposition of a new universal law that in principle 'saves' the part of humanity that has yet to be allowed to enter into the arrangements of liberal law but, in reality, it reinforces its own absolute power and it controls and guides the individual by creating a specific secular subject who enjoys the abstract equality of a (supposedly) neutral secular state within the jurisdiction of the law.

While advancing a particular understanding of the female religious subject, article 9 enhances a specific interpretation of religion as a personal belief, a matter of personal choice. However, the secular universalist perspective that defines religion solely as a private belief carries three significant implications: firstly, it neglects the particularities of different faith communities. Secondly, the secular descriptive definition of religion presents a fundamental problem: by reducing religion to a mere private, un-real, or mythological belief, religion itself becomes a normative concept that assumes specific meanings influenced by power dynamics [47]. In other words, the definition of religion becomes contingent upon those who hold the power to define it within different cultural and historical contexts. Thirdly, by imposing a specific definition of religion and the religious subject, secularism hierarchises different religions and different manifestations of religious beliefs [33], raising problems in the area of equality. Thus, what the legal decisions over the headscarf reveal is that, by defining religion and the religious subject, secularism tries to define and re-define the place of religion and religious practices in the public sphere: hence, more than the mere separation between religion and the state, secularism emerges as a continual management of religious subjectivities which establishes a specific form of knowledge and embodied sensitivities that are produced and reproduced through the force of the law.

The distinction between faith and its outward expression, which lies at the core of the European legal discourse surrounding the veil, makes room for state action to identify and characterise different social spheres of competence such as 'religious' and 'secular' and to justify restrictions of personal freedoms [44]. This shows all the paradoxes of the secular state: that while on the one hand it claims a separation between private and public, then on the other the sovereign power intervenes in the private life of the individual, re-drawing the line between public and private on which is based, and disclosing the prerogative of the secular system to guard the public and private life of the individual.

The difficulty in establishing a clear demarcation between the 'secular' and the 'religious' is not a contradiction, but rather a fundamental condition for the exercise of secular power, which continuously draws and re-draws the line between public and private on which the secular system is based [14]. In fact, as Fernando argues, 'the reformation of immigrant subjects' sexual behaviour so as to reproduce the particular arrangement of public/private on which secular-republican sexuality depends requires the constant trespass of that boundary' [4, 58, 65]. It is precisely through this western notion of freedom of religion that the sovereign power exercises control over the individual's private sphere, where religious sentiments are assigned.

The double structure of the right of religion, at the same time private and privative, protective and detrimental, reveals the embeddedness of Christian/secular values in western law and all its potentiality for exclusion. It is through the semiotics-architectural structure of western law as expressed in article 9 of the ECHR and in the western conceptualisation of the notion of freedom of religion that the law establishes specific dichotomous criteria of inclusion/exclusion, public/private, veiling/un-veiling. In this view, Human Rights and western secular law do not signify the inclusion of all individuals within the protective wings of the law; rather, it reiterates the dipositive of inclusion/exclusion typical of Roman law [66]. Through the

semiotic and architectural structure of article 9, the law has worked towards excluding certain religious sensibilities from the public sphere, contradicting the claims of western and Human Rights law to safeguard the diversity of European societies.

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