

**Liberal Paradoxes:
Women's Body, Religious Expression,
and Gender Equality in a Secular Age**

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Abstract

The debate over the *hijab* has become an arena of fervent discussion in Europe. The recent political developments have opened a discussion on the relationship between a “secularized” West and an Islamic world. At the heart of this debate is the juridical regulation of women’s body and whether a simple piece of cloth such as the veil should be allowed or prohibited. This article takes into consideration two leading cases decided at the European Court of Human Rights over the practice of veiling which rely on the assumption that the headscarf is incompatible with western democratic values because irreconcilable with the principle of gender equality. I argue that the *hijab* cannot be seen as an expression of women’s oppression, as the concept of freedom and agency changes in different historical and cultural contexts: thus, what these decisions reveal is that the

universalism of the Western/liberal concept of freedom and agency has been the main domain through which to read women's oppression and their possibility of agency.

Keywords: headscarf, women's freedom and agency, secularism, Islam

1. Introduction

The image of a silent Muslim woman under the shroud of a *burqa*¹ has been one of the most recurrent during the ongoing Western "war for democracy". The veil, which since the colonial period has been a powerful symbol associated with the "backwardness" of Muslim culture, is still one of the most debated issues when thinking about Islam, terrorism, and Muslim women's freedom. However, while the meaning of the veil as a "sign of" Muslim women's oppression has remained unchanged in the last two centuries of Western culture, in Muslim majority societies veiling is an immanent and performative ever-changing phenomenon which takes different meanings, colors and forms in different cultural and historical contexts (Ahmed 1992; Sedgwick 2006; Mernissi 1991; El Guindi 1999; Bodman and Tohidi 1998).

As I shall argue, it is exactly the operation of collapsing differences among Muslim women through the reading of veiling as a monolithic symbol of something intrinsically 'other' that nowadays reproduces neo-colonial thought (Davary 2009).

This is clear when analyzing legal decisions by the European Court of Human Rights (ECtHR) over the practice of veiling, which rely on the assumption that the practice is irreconcilable with the principle of gender equality and is thus '*incompatible* with western/secular/liberal democratic values'. I will take into consideration two leading cases decided at the ECtHR: *Sahin v. Turkey*, and *Dahlav v. Switzerland*². Although diverse European national courts have disclosed different concepts of secularism, subject's au-

¹ A loose outer garment that covers women's head and face.

² See *Sahin v. Turkey* and *Dahlav v Switzerland*.

tonomy and women's freedom in dealing with the matter³, I consider these cases to exemplify the paradoxes of liberal/Western thought concerning when dealing with the matter of women and religious freedom. Reading Wendy Brown (2001) on the need to cast doubt on the normative limits of liberal political discourse, this article aims to challenge the fixed symbology that ECtHR's judges have attached to the practice of veiling.

Drawing on Mahmood, who spent four years working with the women of the 'piety movement' in Egypt, I will point out that it is possible to conceive an alternative understanding of norms than the liberal one, as different contexts produce different subjectivities: this does not mean to 'Orientalize' Muslim women in a binary structure of 'oppression/liberation', but tries to understand the lives of women, including the practice of veiling, in a non-liberal framework. Since the practice of veiling includes significant variations depending on cultural, historical and political contexts, my focus will not be on whether Muslim women freely choose to veil, rather I want to use the practice of veiling as a benchmark to develop different concepts of agency, freedom and subject formation.

I argue that by defining veiling as a fixed 'symbol of' something intrinsically other, not only do the ECtHR's decisions reveal the inadequacy of Western/liberal universalist discourse over the notion of women's freedom and agency within non-liberal pluralistic contexts, but they also bring private sentiments into the public sphere. In this context, the definition of veiling as a static symbol of women's universal oppression indicates that speaking about the practice in Western societies often becomes problematic, «for the universalism such terminology seems to endorse denies ...[its] cultural variations and specificity» (Hirschmann 2009, 171).

³ In France, for instance, the banning of the veil has been framed in the name of state neutrality and public order (as the headscarf has been considered a practice that challenges French social cohesion as well as secular principles) (Brems 2006). In Germany, eight Länder have passed a law prohibiting the wearing of the veil in public institutions in the name of 'religious pluralism' and for the 'protection of the Christian traditions' of the country (Schiffauer 2006): thus, «while in France the notion of secularity has been interpreted in terms of a rupture from the Christian past, in Germany it has been regarded as implying a continuity of the Christian tradition» (Amir-Moazami 2005, 271). In the United Kingdom, where the government has taken a more flexible approach to cultural diversity, recent legal controversies in relation to the wearing of the veil at work and within educational institutions have re-opened the discussion about multiculturalism. Although national European courts have framed the issue of veiling differently, (Muslim) women's body remains at the center of many polemical debates in Europe.

2. On the dichotomy between the ‘veiled’ and the ‘naked’ body

In the 1960s, western feminists’ struggle for emancipation rendered a simple piece of clothing, such as the mini skirt, the symbol of a whole social and cultural change. At that time, the mini skirt represented the possibility for women to make choices about their body, historically controlled by patriarchal social and political powers. ‘I wear my Skirt as I like’ could be a slogan of women struggling for the mini skirt more than forty years ago; rather, it is a campaign created in 2015 after the expulsion of young girls from schools in France and Belgium because their skirts were considered ‘too long’ and thus a ‘provocation, and potential act of protest’⁴. The decision, made by the respective heads of school, was taken after the banning in both countries of religious symbols from public schools in the context that the ‘long-skirt’ was considered ‘Muslim clothing’ and thus a ‘religious symbol’. This indicates that the juridical regulation of women’s body, 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 nowadays. This obsession is now mirrored in Western legal decisions over women’s clothes; whereas the “naked body”, symbolized in the mini skirt, is considered a “sign of” women’s liberation associated with their possibility of agency, the ‘long-skirt’ (along with the *hijab*) has been regarded as a ‘conspicuous religious symbol’ incompatible with Christian/secular/liberal⁵ values of tolerance and gender equality. It seems, therefore, that in the Christian/liberal/secular West, in which the model of ‘liberated’ woman has been ‘naturalized’ and ‘universalized’, the length of women’s skirts becomes the *measurement* of women’s freedom.

The centrality of women’s body performativity is exemplified in the comparison between *Dahlab* and *Kokkinakis* cases decided at the ECtHR.⁶ Dahlab was a teacher in a primary school in Switzerland. After a period of deep spiritual searching she converted to Islam and started to wear the *hijab*. She wore the veil for four years without disclos-

⁴ See Tharoor (2015). See also Furniere (2015).

⁵ I have chosen to use this term because I see a continuation between Christianity and the secular (Kantorowicz 1957; Diamantides 2015).

⁶ See *Dahlav v. Switzerland* (*supra*), and *Kokkinakis v. Greece*.

ing her religious beliefs; 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 (*Dahlab v. Switzerland*, 456). After four years, an inspector visited the school and reported that Dahlab was wearing “Muslim” garments. The Director General of Public Education tried to mediate with Dahlab and asked her to remove the veil: when she refused, alleging her right to wear the headscarf, she was dismissed. She appealed the decision in the Swiss Court, which upheld the decision of the School based on a law that explicitly prohibits the wearing of religious symbols in public schools. Dahlab appealed at the ECtHR which, in line with the Swiss Court, did not find any violation of the claimant’s fundamental rights⁷. The decision was justified based on the principle of necessity, which states that the fundamental rights of the Convention can be limited for the protection of public order and to defend democratic values⁸: in the case, Dahlab’s veil was considered an element of ‘tension’ in the school. Based on ECtHR’s jurisprudence, in cases of social tension and conflict, the parties should take measures to reconcile and not to prohibit group manifestations. However, instead of trying to reconcile the parties based on the principle of plurality⁹, the Court’s judges presupposed that when the individual works in public places s/he has to comply with liberal/secular values and they focused on 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» (*Dahlab v. Switzerland*, 449): in other words, the woman bearer of rights becomes the accused. In fact, instead of weighing the rights of Dahlab to wear the *hijab* with the

⁷ See Article 8 – «Right to respect for private and family life», Article 9, «Freedom of thought, conscience and religion», Article 10 – «Freedom of expression», Article 14 – «The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground» (‘European Convention on Human Rights ; 2016). Notably, this was the first case in which the ECtHR’s judges referred to the gender dimension of the act of wearing the veil as a further justification to ban the headscarf in public schools.

⁸ The key provision in the Convention for the protection of human rights and fundamental freedoms with respect to freedom of religion is art. 9. 1 («everyone has the right to freedom of thought, conscience and religion»). Art. 9. 2: «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» (‘European Convention on Human Rights; 2016).

⁹ In *Kokkinakis v. Greece*, para 31 and in *Manoussakis and Others v. Greece*, para.44, the ECHR clearly stated that pluralism is an important feature in a democratic society.

rights and freedom of others, the ECtHR presented an (imaginary) undefined ‘other’ in need of protection from the “wrongdoing” of Dahlab.

The most controversial point of the decision is the accusation of proselytism moved against the claimant. In fact, it is not clear which kind of ‘bad influence’ or ‘proselytizing effects’ Dahlab was exercising on ‘vulnerable children’ since she did not even tell them that she had converted to Islam. The weakness of the accusation of proselytism moved against the claimant is evident when comparing the case with *Kokkinakis v. Greece*, decided at the ECtHR. In the case, two Jehovah’s Witnesses were charged with the criminal offence of proselytizing by the Greek Court after knocking on the door of diverse Greek Orthodox priests in order to try to convince them of the truth of their religion: surprisingly, for the ECtHR’s judges, Dahlab’s veil had ‘proselytising effects’, while Kokkinakis’ speech not. In other words, Dahlab’s illocutionary act (or performance) represented a greater threat to liberty than Kokkinakis’s attempt to proselytize in a country where it is illegal¹⁰.

The clash between women’s performative body and the logocentrism on which Western polity and law is based is clear also in the *Sahin* case, in which a young university student at Istanbul University was denied access to a written examination because veiled, following a circular released by the university prohibiting students from wearing the headscarf. 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 first to the Istanbul Administrative Court, which dismissed her application, claiming her right to wear the *hijab* in the university. Then in 1998 she lodged a complaint against the Turkish government, claiming that the ban on wearing the headscarf in higher education violated her rights under Articles 8, 9, 10 and 14 of the European Convention on Human Rights and Article 2 of Protocol No. 1¹¹. The case reached the Strasbourg Court and in 2005 the Grand Chamber decided that the university’s refusal to allow her to wear a headscarf did not violate Article 9 of the European Convention of Human Rights. The ECtHR’s decision was based on the assumption that the values of *Sharia* law, symbolized in the veil worn by the claimant, are illiberal and incompatible with

¹⁰ See Article 13. 2 of the Constitution of Greece (2016).

¹¹ *Supra*

Western/liberal/secular democratic principles of gender equality. In the case, the Court felt the need to retell the master narrative of the rise of the secular state in Turkey and it appeared that the problem was the existence of religious extremist groups that were threatening the secular Turkish Republic. For this reason, based on the ECtHR's reasoning, the measures adopted by the university were in line with the Convention. It is not clear, however, whether there were extremist Islamist groups operating in the university; how these groups affected public order; and if the applicant had a relationship with those groups. None of these points were answered by the Court. Rather, it seemed that the general approach of the Court sets forth a general rule for Turkey, which implies that, because in the country the majority of the population is Muslim, it is essential to ban the veil in order to protect the freedom of others, the public order, and the principle of secularism and gender equality¹². However, by focusing on the history of Turkey and the (supposed) existence of extremist religious movements which attempt to overthrow the secular state, the Court made a mistake: it «substituted Turkey for the University of Istanbul and Islam for the headscarf» (Altiparmak and Karahanogullari 2006, 279).

In both cases, (Muslim) women's body performances have been intended as expression, symbol and 'sign' of something intrinsically 'other' from which society must be protected. In fact, as I have argued, article 9 of the Convention, at the center of the ECtHR judges' decisions in the analyzed cases, can be limited only if it is *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. Hence, by applying the principle of necessity to justify banning the veil, the ECtHR's judges determined that the harm caused by a veiled woman to society is of more importance than the harm caused by the law to many veiled Muslim women in the name of women's rights: as a result, Dahlab lost her job because her veil, understood as a "symbol of" gender inequality and un-liberal values, was considered a threat to 'vulnerable children', while Sahin was obliged to move to another country because her veil was seen as a "sign of" Islamist proliferation and so a threat to Turkey's secular values. All in all, it seems that the debate over the practice of veiling has become the terrain upon which

¹² It is worth noting the dissenting opinion of Judge Tulkens, who pointed out that what was missing in the debate was the opinion of women.

concepts of secularism, individual autonomy and gender equality are discursively constructed.

While many Western/liberal scholars have studied Muslim women's freedom and their possibility of agency in terms of the moral autonomy of the subject resisting external (patriarchal) structures of power (Ahmed 1992), Mahmood's study moves «beyond the teleology of emancipation underwriting many accounts of women's agency» (Mahmood 2001, 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» (Ivi, 203). 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»¹³ (Mahmood 2011, 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» (Ivi, 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. Interestingly, they 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 (*Ibidem*). Thus, the body emerges as a "*medium for, not a sign of*".

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 "mor-

¹³ Foucault's analysis (1981) of ethical formation helps to understand agency firstly as a capacity required to take specific moral action and, secondly, as bounded to cultural and historical discourses through which the subject is formed.

al-subject”. These differences within an (apparently) united movement help us 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/liberal subject of law. This plurality of normative choices is embedded in the very structure of Islamic law: since in classical Islamic jurisprudence there does not exist a centralized authority that regulates and/or punishes infractions, and due to the lack of consensus over many issues, including the practice of veiling, juridical matters become interpretable by the individual. As Asad (2009) argues, the engagement of ordinary Muslims with Islamic founding texts depends on the context through which those texts acquire a specific meaning¹⁴.

The donning of the veil is a good example of the plurality of sources and discourses in which women maneuver their agency. If for a pietist the veil is a tool to acquire specific ethical achievements, for Bedouin women veiling is a symbol of an individual ethic and honor 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).

« These discursive challenges to customary practices illustrate women’s power to exert some control over the conditions of their lives by redefining those practices and categories of meaning: women reconstruct their material realities through discursive intervention in customary practice». ¹⁵

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/liberal scholars: 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 only subverted or re-enacted but also

¹⁴ Similarly, as Rappaport (1999, 93) points out, 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’.

¹⁵ (Hirschmann 2009, 186).

lived, experienced, 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 colors, shapes and forms, it also implies different meanings and normative choices within different social, cultural and historical contexts (Davary 2009).

The attempt by liberal scholars and judges to see the practice of veiling as a fixed and unchangeable religious/cultural symbol, a “*sign of*” and not a “*medium for*”, does not take into consideration either the plurality of meanings and practices of veiling or the historical, social, and cultural context within which certain practices, will and desires develop. Differently, Mahmood’s study discloses how women maneuver their agency within different frameworks of power and how specific body performances can be understood in non-liberal terms: agency comes from «within sematic and institutional networks that define and make possible particular ways of relating to people, things, and one self» (Asad 2003, 78). In other words, she helps to understand other forms of subjectification that do not necessarily fall into the neo-liberal idea of freedom as autonomy and the Manichean dialectic between freedom and coercion.

3. Re-conceptualizing women’s freedom: an eastern/western perspective

The liberal concept of agency is strictly related to the concept of freedom 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)¹⁶. Negative freedom is defined by the absence of external obstacles, while positive freedom is

¹⁶ From ‘natural freedom’, associated with the emergence of ‘natural rights’, to a new concept of freedom linked to a specific concept of humanity, as emerges in human rights law, ideas such as self-determination, autonomous will and (abstract) ‘equality’ come to define Christian/secular/liberal culture and polity: the social contract, for instance, is based on a specific (individualist) Western concept of freedom, choice, and consent (Hirschmann 1997, 461-462; Mill 1998).

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 2011, 11). The difficulties in the western/liberal 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, 10).

Since the individual emerges as a mask, an abstraction, the liberal approach does not help to understand how will and desires are formed. If, as liberal scholars argue, we have conflicting internal desires, then how can we understand our true will? If, echoing Foucault (1981), the subject emerges as the product of a particular social formation and as such is not only ‘constrained’ but also formed by it¹⁷, then we need to interrogate the liberal assumption of a ‘rational-self-master’ who knows exactly what his/her true desires are.

In fact, if desires and interests come to be shaped by what the general discourse renders “available”, then «the ideal of the naturalized and unified subject utilized by most freedom theories is [...] deeply problematic and simplistically overdrawn» (Hirschmann 2009, 13).

Abu-Lughod’s study 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 honor, remains central. For Bedouin, honor is strictly linked to the status of each tribe and is associated with the capacity to «stand alone and fear nothing», for «fear of anyone or anything implies it has control over one» (Abu-Lughod 2000, 88): this is measured as both the capacity to secure authority and the free consent to obey. Hence, if on the one hand, the individual must be strong and independent, then on the other, she is entangled in tribal hierarchical structures, due the

¹⁷ Of particular interest is Sandel’s critique (1998) of the Western/liberal concept of the individual. Through an analysis of the paradoxes of Rawls’ notion of the individual as detached from all empirical constraints (derived from the Kantian ethic), he argues that individuals are not detached from the community, but constituted by it.

link between honor, autonomy and tribal status.¹⁸ Veiling, for instance, is considered a source of honor and, hence, of freedom because it attests to a certain independence from men, as it «serves as a statement that the wearer is intent on preserving herself as separate from others, emotionally and psychologically as well as physically; it is a tangible marker of separateness and independence» (Hirschmann 1997, 474)¹⁹. Abu-Lughod's analysis is of particular interest because it reveals that the main difference between the "eastern" and the "liberal/western" idea of freedom does not lie in the importance people give to the concept of freedom, but in a different notion of the individual. In fact, at the heart of eastern concepts of freedom is not the self-reliant, self-controlled, lonely western/liberal citizen, but an individual who is part of a community which, in turn, deeply influences concepts of self, freedom and agency.

This shows how the question of women's freedom emerges as extremely ambiguous in relation to specific discourses which, in turn, form specific subjectivities. For Bedouin women, pietists, and MacLeod's Egyptians (1991), the veil represents an instrument of agency not intended as repetition/subversion of norms, but as a way for individuals to inhabit norms *within* specific discourses. Those women, unlike the Western/liberal citizen detached from her/his community and alone before the state, maneuver their lives *within* a community in which other values of freedom and autonomy emerge: in other words, when analyzing concepts of women's freedom and agency, it is essential to understand the local context in which certain bodily acts are performed and certain desires formed.

Therefore the analysis of the practice of veiling should take into consideration «not just [...] whether the choosing subject can act on her choice but how that subject and her choices are constructed in the first place» (Hirschmann 1997, 483). In this sense, 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

¹⁸ For Bedouin women, for instance, challenging a familiar hierarchy would be considered a dishonor and, thereby, a mark of un-freedom (Abu-Lughod 2000).

¹⁹ It is worth pointing out, however, that if on the one hand women maneuver their agency within structures of power, sometimes re-enacting patriarchal norms (Elster 1983; Okin 1999), then on the other, those norms give them the framework within which they negotiate their choices (Alvi 2013; Foucault 1981, 1970).

choices I have, the more I am supposed to be free) (Hirschmann 1997). In fact, as I have argued, the western/liberal 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 2011, 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: specifically, the liberal distinction between a subject’s own desires and social conventions cannot be easily presumed in Muslim majority societies since «socially prescribed forms of behavior constitute the conditions for the emergence of the self as such and are integral to its realization» (Mahmood 2011, 149). Clearly, a study on veiling cannot be mapped from the Western/liberal binary distinction between more and fewer choices, as the way in which we experience our daily life is far more complicated.

If the freedom of the Christian/secular/liberal 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. In this sense, ECtHR’s decisions over the practice of veiling reveal a ‘universalized’ and ‘naturalized’ idea of women’s freedom, and show that the immanent and multi-layered pluralistic practice of veiling escapes Western eyes. 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, 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/liberal discourse lies exactly in the homogenized representation of covering practices which allow the continuation of an epistemic violence against Muslim women (Husain and Ayotte 2005). By defining veiling as a ‘backward’ ‘religious practice in contrast with secular/liberal values of gender equality’, not only do ECtHR’s 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, colors, and meanings in different cultural and historical contexts. Therefore, «to assume that the mere practice of veiling women in a number of Muslim countries indicates the universal oppression of women through sexual segregation not only is analytically reductive, but also proves quite useless when it comes to the elaboration of oppositional political strategy» (Mohanty and Russo 1991, 632). In this sense, ECtHR’s decisions over the practice of veiling support «western imperialism by re-inscribing western definitions and dichotomies onto eastern practices in a reactive manner» (Hirschmann 2009, 195), they fail to recognize that the veil represents a plurality of norms, ethics and bodily practices, and they reduce the subject to a singular and fixed identity (Doniger 2004). 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 wars as well as Islamists’ struggles: 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 culture and history. «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, 1003): in this sense, «the effort to unveil forcefully Muslim women who have chosen Islamic attire would be akin to the intolerance of those who attempt to mask them by imposing the veil» (Davary 2009, 158). 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). Thus, it is not the veil that renders women free or unfree, but the means that patriarchy allocates to a specific article of clothing that inflicts epistemic gender violence.

4. Conclusion

According to the European Convention of Human Rights, religious freedom is not limited to belief but it extends also to its manifestations and it is «one of the foundations of a democratic society» (*Kokkinakis v. Greece*, para 31); however, not every act based on religious belief is protected by article 9. In the ECtHR's decisions, it is the term 'practice' in article 9.1 which «does not cover each act which is motivated or influenced by a religion or belief» (*Arrowsmith v. the United Kingdom*, 19)²⁰. In fact, the manifestation should be one of the «normal and recognized manifestations of religion or belief» that «actually express the belief concerned» (*Arrowsmith v the United Kingdom*, 20). It is therefore unclear why the ECtHR's judges could not consider the veil a 'normal manifestation' which expresses a profound religious belief (Evans 2001).

This instance becomes clear if we assume that article 9 protects the rights of subjects who comply with the principle of secular liberalism and with a secular mode of experiencing religion.²¹ Those legal decisions emerge as the *emblem* of the intrinsic paradoxes and contradictions of liberalism and human rights discourse in general and of the particular violence this contradiction entails for non-western traditions of law and politics in particular. While, on the one hand, liberalism justifies itself by claiming a separation between the spiritual and the temporal, the private and the public, then on the other, the private life of the individual has become extremely regulated. In other words, although human rights law is centered upon a liberal concept of the individual, it increasingly aims at state control of human conduct and the individual's physical being, the body, even though it calls for the protection of 'minorities' within a plural society (Mark van Hoecke 2016).²²

In this sense, those decisions reveal not only the emergence of a specific Christian/secular/liberal subject of law, one who is free and, at the same time, compelled, but

²⁰ *Arrowsmith v. the United Kingdom*.

²¹ In fact, Western/liberal/secular thought presupposes that the privatization of religion is the solution to cultural conflicts within a society: it defines religion as a private believe (and not as a constitutive part of the subject) and it assumes that people will keep it in the private sphere, leaving the public sphere as a space of 'people's consensus' (Mahmood 2009)

²² Here, 'secularism' is understood as the reconceptualization of religious practices and sensitivities in the public sphere (Mahmood 2009; Asad 2003).

they also disclose a specific notion of womanhood, where hair is visible: as Fadil (2011) argues, secular/liberal discourse has naturalized women's body and has discursively constructed the 'un-veiled' body as the natural and free one. This is clear in the ECtHR's decisions over the practice of veiling in which women's desires have been naturalized and defined by the appropriate authority. However, by defining the veil as a fixed 'symbol of something intrinsically other', the Court has 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. In other words, what is at stake in the ECtHR's legal decisions, 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, 97). It is through the definition of veiling as a "sign of" that the "covered body" becomes a static symbol of cultural/religious belonging, an "object".

The result of this operation 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". The debate over the *hijab* and the definition of the appropriate garments women can wear in the public sphere highlights that in Western/liberal countries the "woman question" has been a useful tool to create a dichotomy between two dis-similar imaginaries of womanhood; 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, 216).

In conclusion, what emerges from the ECtHR's legal decisions over the practice of veiling is that the western/universal-ist/liberal concept of freedom and agency has been the main domain through which to read women's oppression and their possibility of agency. However, by taking into consideration only the western/liberal notion of indi-

vidual freedom, western/liberal/positive/universalist law hides other forms of humanity (Esmeir 2012) and other concepts of freedom and agency.

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