

human autonomy and which role we seek to assign to it, no doubt colour our legal reasoning and are instrumental in assigning appropriate meaning to key discrimination terms such as '(in)direct discrimination', 'genuine and determining occupational requirement', and 'objectively and reasonably justified'. One can see that the freedom of religion or belief, and the reasonable accommodation that can be considered an implied part of some understandings of this 'first human right', increase the options available for minorities in a pluralist society. The choice factor, however, can also operate to weaken and muffle protection under legal instruments such as EU anti-discrimination law, as its relevance is considered a distinguishing factor between the discrimination strands. In the words of AG Kokott:

[U]nlike sex, skin colour, ethnic origin, sexual orientation, age or a person's disability, 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. While an employee cannot 'leave' his sex, skin colour, ethnicity, sexual orientation, age or disability 'at the door' upon entering his employer's premises, he may be expected to moderate the exercise of his religion in the workplace, be this in relation to religious practices, religiously motivated behaviour or (as in the present case) his clothing.⁵⁵

In this sense, autonomy does not serve as 'a coordinating mechanism between different normative systems' or as 'justification for individuals' preferences', but rather as a justification for exclusion of religious minorities who seek the security, safety, and comfort of mainstream employment. The margin of appreciation left to individuals in such cases forces them into an Antigone's dilemma that 'accommodative law' should seek to avoid within contemporary Western societies. What seems most needed in this context is an understanding of personal autonomy that leads to substantive equality and opens up space for different conceptions of the good life, one that challenges the exclusionary effects that are linked to the element of 'choice' and prizes value pluralism and intercultural interaction in diverse societies.

⁵⁵ AG Kokott, *Achbita* case (n 22), para 116.

8 Adopting a face veil, concluding an Islamic marriage

Autonomy, agency, and liberal-secular rule

Annelies Moors

Introduction

In the Netherlands a wide range of Islam-related practices have been at the centre of heated public debate in the course of the last decade. In this contribution, I focus on two of these practices – face veiling and what is commonly referred to as 'Islamic marriages'¹ – which have not only drawn the attention of the media, but also of politicians, policymakers, and parliamentarians.² Various attempts have been made to ban these practices. In the case of face veiling, this concerns either proposals to prohibit wearing face coverings in all public spaces or more limited locational and functional prohibitions. With respect to Islamic marriages, nearly forgotten legislation has been revived, while the association of Islamic marriages with forced and cousin marriages has triggered new legislation. However, this chapter only marginally engages with the question of whether governmental actors have succeeded in producing and implementing specific laws or regulations. Rather, it broadens the scope and investigates the wider range of effects that the problematization of these practices produces.

My point of departure is that face veiling and Islamic marriages did not simply appear as problems in need of regulation, but that particular actors turned these practices into issues that require state intervention. In order to better understand how debates about face veiling and Islamic marriages emerged and the work they do, I use Foucault's notion of problematization, which draws attention to how producing and presenting particular issues

¹ The term 'Islamic marriages' refers here to those marriages that the couple involved believe to be valid under Islamic law and that are concluded without the prior conclusion of a civil marriage. According to Dutch law, these Islamic marriages do not have legal effects. Moreover, it is prohibited to conclude a religious marriage prior to a civil marriage (Art. 1:68 Civil Code), but only the religious functionary concluding the marriage is punishable by law (Art. 449 Penal Code). According to Islamic law, the presence of a religious functionary is not required for a marriage to be valid.

² In this contribution I use the results of two research projects in which I am engaged, one focusing on face veiling (see A Moors, 'The Dutch and the Face Veil: The Politics of Discomfort' (2009) 17(4) *Social Anthropology* 392; A Moors, 'The Affective Power of the Face Veil: Between Disgust and Fascination' in B Meyer and D Houtman (eds), *Things: Material Religion and the Topography of Divine Spaces* (Fordham University Press 2012); A Moors, 'Face Veiling in the Netherlands: Public Debates and Women's Narratives' in E Brems (ed), *The Experiences of Face Veil Wearers in Europe and the Law* (Cambridge University Press 2014)), the other on Islamic marriages (see A Moors, 'Unregistered Islamic Marriages: Anxieties About Sexuality and Islam' in M Berger (ed), *The Application of Sharia in the West* (Leiden University Press 2013)). This contribution builds on these earlier publications. Since 2013, my research on Islamic marriages has been funded by the European Research Council (ERC) advanced grant 'Problematizing "Muslim Marriages": Ambiguities and Contestations' (ERC Project 2013-AdG-324180).

as a problem is part and parcel of the process of governing.³ When practices are turned into problems, the language used does not simply describe reality, it also (co)produces it. In other words, discursive practices have material effects. In our case, this raises a number of questions: How, by whom, and under what conditions have face veiling and Islamic marriages become defined as 'problems'? What kinds of questions does this raise? What answers do these questions evoke? And what wider societal effects does this all engender? At the same time, we need to recognize that there is potentially always a gap between hegemonic discourses and how subjects respond to them.⁴ This is evident when we turn to the narratives of the women concerned and analyse how they engage with the ways in which these practices have become problematized.

Although wearing a face veil and concluding an Islamic marriage are different kinds of practices, in both cases participants in public debate directly or indirectly draw on personal autonomy and related notions such as free choice or free consent. In doing so, tensions between 'women's rights', 'cultural rights', 'gender equality', 'the freedom of religion', and/or 'the freedom of expression' become apparent. Hegemonic discourse treats both face veiling and Islamic marriages as contributing to gender discrimination against Muslim women and to their oppression by their families and 'the community'. The women engaging in these very practices commonly state, however, that they themselves opt to cover their faces or to conclude Islamic marriages, and that they frequently do so against the wishes of their parents. Criticizing attempts to ban face veiling and Islamic marriages, they appeal to civil rights, in particular the freedom of religion and the principle of non-discrimination, and point to the double standards employed by those arguing for such bans. Hence, these issues seem to be classic cases of minoritized women defending their right to choose to engage in practices that the majority society considers discriminatory and detrimental to them. Before analysing the kinds of work the concept of 'personal autonomy' does in these debates, I first briefly turn to how debates about personal autonomy and cultural rights are gendered.

With respect to liberal democracies, Susan Okin's influential essay 'Is Multiculturalism Bad for Women?' functions as a paradigmatic text.⁵ Okin argues that even if 'Western liberal cultures' also still practise many forms of sex discrimination, they have 'departed far further' from their 'distinctly patriarchal pasts' than others, as women in these Western cultures are 'legally guaranteed many of the same freedoms and opportunities as men'.⁶ In her view, recognizing cultural rights is highly problematic in the case of cultural minorities that are characterized by strong patriarchal control of men over women, especially in the domestic sphere and with respect to sexuality and reproduction. Okin has been widely criticized for using a strongly reified and static notion of culture and for limiting minority women's agency to active resistance against their own 'cultural tradition'.⁷ Juxtaposing second-hand

3 N Rose and P Miller, 'Political Power Beyond the State: Problematics of Government' (1992) *British Journal of Sociology* 173; C Bacchi, 'The Turn to Problematization: Political Implications of Contrasting Interpretive and Poststructural Adaptations' (2015) 5(1) *Open Journal of Political Science* 1.

4 J Butler, *Excitable Speech: A Politics of the Performative* (Routledge 1997).

5 SM Okin, 'Is Multiculturalism Bad for Women?' in J Cohen, M Howard, and M Nussbaum (eds), *Is Multiculturalism Bad for Women? Susan Moller Okin With Respondents* (Princeton University Press 1999).

6 Ibid. 16.

7 See, for instance, the responses to her essay in J Cohen, M Howard, and M Nussbaum (eds), *Is Multiculturalism Bad for Women? Susan Moller Okin With Respondents* (Princeton University Press 1999); L Abu-Lughod, 'The Debate About Gender, Religion, and Rights: Thoughts of a Middle East Anthropologist' (2006) 121(5) *PMLA* 1621.

cases of male domination in the private spheres of minority cultures with the formal gender equality in Western liberal society's public sphere, she provides little or no insight into the wide range of positions the women concerned take up with respect to such practices.

This variety of positions is central to Deveaux, who discusses how personal autonomy and cultural traditions are at stake in debates about arranged marriages in the United Kingdom. She proposes moving from questioning whether 'contested cultural practices undermine or support personal autonomy' to investigating 'the range of actual and possible individual and social responses to specific customs and arrangements'.⁸ Employing a broad understanding of agency, she argues for a 'thinner, less idealized view of autonomy' that takes into account the various ways in which 'women in traditional cultures challenge, revise, and reaffirm aspects of cultural practices and arrangements'.⁹ In other words, her concern is about agents' abilities to reflect upon and respond to social practices, which includes how 'vulnerable group members may revise and reinvent certain traditions to empower themselves'.¹⁰ Deveaux's approach is critical of labelling people's relationships to cultural practices as a matter of either autonomous choice or oppressive constraints and points out how employing liberal norms of consent and choice frame contested cultural practices as overly static.¹¹ Arguing against simple binaries of force versus choice, she highlights the need to empirically investigate the motivations of women who engage in practices that to the majority public may seem contrary to their interests.¹²

In the following, I start with tracing how and under what conditions wearing a face veil and concluding an Islamic marriage have become problematized in the Netherlands. In the next section, I then present the range of motivations, desires, and intentions the women who engage in such practices present. In doing so, I focus on how notions such as autonomy or agency are employed both in hegemonic discourse and in the narratives of the women themselves. I conclude with a note on how liberal-secular rule produces more and less acceptable forms of religion and sexuality, and hence considers some expressions of autonomy desirable and other expressions undesirable and even transgressing what may be tolerated.

Problematizing face veiling and Islamic marriages: a lack of personal autonomy

In the course of the first decade of this century, both wearing a face veil and concluding an Islamic marriage have been turned from non-issues into hotly debated topics. In the case of face veiling, the issue concerns an exceedingly small number of women who have become hypervisible in public space. Islamic marriages, in contrast, are more widespread, yet remain largely invisible to the general public. Still, there are notable similarities in how

8 M Deveaux, *Gender and Justice in Multicultural Liberal States* (Oxford University Press 2006) 173.

9 Ibid.

10 Ibid. 179.

11 Ibid. 184.

12 S Bracke and N Fadil have elaborated on the ways in which this problematic opposition works in the case of headscarf debates (S Bracke and N Fadil, 'Is the Headscarf Oppressive or Emancipatory? Field Notes From the Multicultural Debate' (2012) 2(1) *Religion and Gender* 36), drawing on the work of S Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton University Press 2005). While not referring to Mahmood's work, Deveaux also criticizes approaches that assume that the only way to express agentic power is through resistance to authority.

both issues have become problematized, with much debate centring on women's personal autonomy or, rather, the lack thereof.

The emergence of the 'burqa debates'

Although not a completely new phenomenon, it was only in early 2003 that face veiling became a major issue of public debate in the Netherlands.¹³ This happened when three Moroccan-Dutch students who had started to wear face veils were refused entry to a school for vocational training and adult education and raised a complaint with the Equal Treatment Commission.¹⁴ In the end, the various parties opposing face veiling at educational institutions were all satisfied with the outcome of the case. Individual schools could prohibit face coverings as long as they did not refer to religion and if they provided valid justification such as, in this case, impeding communication and hindering identification, thereby posing a security risk.¹⁵

At the time, there were no voices expressing the desire to prescribe a prohibition at the national level, let alone to implement a general ban, but two years later the situation changed dramatically. In December 2005, a parliamentary majority voted in favour of Geert Wilders's resolution 'to prohibit the public use of the *burqa* in the Netherlands', and the Netherlands became the first country in Europe to attempt to introduce such a general ban.¹⁶ The arguments used were also very different. Wilders's resolution explicitly referred to a specific Islamic garment, 'the *burqa*' (or 'the *nigab*'), and stated that the *burqa* is a symbol of women's oppression and is, therefore, inhumane, that it is unacceptable that people appear in public who cannot be identified, and that it widens the gap between the native Dutch and others.¹⁷

Wilders was not alone in drawing heavily on the common trope of Muslim women's subordination, amplifying and sedimenting this discourse through the performative power of words. When the media reported on the 2003 case, a variety of terms such as face veil, *nigab* (the term the women themselves use), *chador*, and *burqa* were used interchangeably to refer to face coverings, with the term *nigab* mentioned far more often than the term *burqa*. Within a few years, however, this had changed, and by 2006 the variety of terms had narrowed down to one preferred term, *burqa*.¹⁸ This is remarkable, as face-veiling

13 For an overview of debates about and attempts to ban face veiling in Europe, see R. Grillo and P. Shah, 'Reasons to Ban? The Anti-Burqa Movement in Western Europe' (2012) 12(5) *Working Paper Max Planck Institute for the Study of Religious and Ethnic Diversity*, E. Brems (ed), *The Experiences of Face Veil Wearers in Europe and the Law* (Cambridge University Press 2014). For an analysis of how the media hype around face veiling was generated at particular moments, see A. Moors, 'The Dutch and the Face Veil: The Politics of Discomfort' (2009) 17(4) *Social Anthropology* 392, 396ff.

14 Moors (n 13) 396.

15 See CGB case no. 2003-40 <www.mensenrechten.nl/publicaties/oordelen/2003-40> accessed 29 July 2016. In a rather similar case in 2000 (see <www.mensenrechten.nl/publicaties/oordelen/2000-63> accessed 29 July 2016), the CGB stated that there was no objective justification for a prohibition against face veiling. At the time, neither the media nor politicians paid any attention to this case.

16 Parliamentary document 29754, no. 41. France implemented a ban on wearing face coverings in public space on 11 April 2011, and Belgium did so on 23 July 2011.

17 Parliamentary document TK 29754, no. 41.

18 A. Moors, 'The Affective Power of the Face Veil: Between Disgust and Fascination' in B. Meyer and D. Houtman (eds), *Things: Material Religion and the Topography of Divine Spaces* (Fordham University Press 2012).

women in the Netherlands do not wear the Afghan-style *burqa* (a one-piece garment with a mesh in front of the eyes), but rather cover the face with a thin piece of cloth, often leaving the eyes visible, a style more commonly worn in parts of the Middle East. The point, however, is not that a technically incorrect term is used to describe face veils, but rather that '*burqa*' is an overdetermined term that evokes Muslim women's gender subjugation. In 2001 and 2002 this term had already regularly been used in the media (and hence was known to the public) as evidence of the particularly gender-repressive nature of the Taliban regime in Afghanistan. In the years to come, not only was this link between face veiling and the Taliban regime reiterated in the media, but the term *burqa*, with its associations of women's oppression, was also employed in similar ways in parliamentary debates and in popular culture.¹⁹

These attempts to ban the face veil need to be seen within the context of an ongoing process of the culturalization of politics and citizenship.²⁰ From the early 1990s on, those who had previously been labelled guestworkers and ethnic minorities were increasingly categorized first and foremost as Muslims (with some also defining themselves as such). Simultaneously, Islam came to be seen as the root cause of a wide range of societal problems and, more generally, as incompatible with European values.²¹ By the end of the twentieth century, a populist anti-Islam movement had started to gain ground, arguing that the way of life of the majority population was under threat of Islamization. Proposing a more muscular neo-nationalism, its proponents distanced themselves both from the ancient regime of a pillarized society they (or their parents) had freed themselves from in the 1960s and from the 'multicultural tolerance' of the 1980s.²² An early exponent of this trend was Pim Fortuyn, whose popularity skyrocketed after the 9/11 terror attacks that marked the beginning of the global 'war on terror'.²³ His murder in May 2002 by an animal rights activist a few days before the national elections and the enormous election victory of the List Pim Fortuyn led to a political landslide. In the years to come, and especially after the murder of Theo van Gogh in November 2004 by a young Moroccan-Dutch man who claimed to have committed the murder on religious grounds, mainstream political parties also increasingly adopted an anti-Islam stance.

19 Ibid.

20 M. Mamdani, *Good Muslim, Bad Muslim: America, the Cold War, and the Roots of Terror* (Three Leaves Press 2004); A. Moors, 'The Dutch and the Face Veil: The Politics of Discomfort' (2009) 17(4) *Social Anthropology* 392; P. Geschiere, *The Perils of Belonging: Autochthony, Citizenship, and Exclusion in Africa and Europe* (University of Chicago Press 2009).

21 A major turning point was Frits Bolkestein's speech at the Liberal International in Lucerne in 1991, in which he asserted the incompatibility of Islam and Western, liberal values (*NRC Handelsblad* 21 September 1991); another was Paul Scheffer's article 'The multicultural drama', in which the author, a prominent Labour Party ideologue, considers Islam the main reason for the failure of the integration of minorities (*NRC Handelsblad* 29 January 2000).

22 See P. van der Veer, 'Pim Fortuyn, Theo van Gogh, and the Politics of Tolerance in the Netherlands' (2006) 18(1) *Public Culture* 111-124. 'Pillarization' refers to the segregation of society along confessional and ideological lines ('pillars'), with the elites of these pillars cooperating in state administration; see A. Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (University of California Press 1968).

23 Pim Fortuyn had already published his *Tegen de Islamisering van onze samenleving* ('Against the Islamization of Our Society') in 1997. Half a decade after his murder, two new anti-Islam political movements had emerged: Geert Wilders established his Party for Freedom in February 2006, and Rita Verdonk launched her movement Proud of the Netherlands in October 2007.

The turn to 'Islamic marriages'

In the same year that Wilders was preparing his resolution for a general ban on face veils, Islamic marriages also emerged as a topic of debate and policymaking. Whereas prior to 2005 almost no attention had been paid to Islamic marriages, in the years since there have been two distinct peaks in media attention, the first occurring in 2005 in relation to the Hofstad network and the second in 2008 centred on 'Salafi imams'.²⁴

The sudden hype over Islamic marriages in 2005 emerged in the context of the trial of the members of the Hofstad network, when journalists started to report on the Islamic marriages that were concluded in the circles related to this network. These marriages were not only unregistered, but were also concluded in a highly informal manner, without the knowledge, let alone the involvement, of the parents of the young women. Many newspaper articles referred to information provided by the two Dutch civil security services, the AIVD and the NCTb (now NCTV), with the NCTb even publishing a report in February 2006 asserting that Islamic marriages represented a threat to national security.²⁵ The main arguments were that these marriages could function as a means to recruit women for the violent jihad, that they might indicate that a man is entering the last phase prior to becoming a martyr in a terrorist attack, and that they could in time become a threat to the democratic rule of law, as ultra-orthodox Muslims refuse to register civil marriages on ideological grounds.²⁶

In 2008, Islamic marriages again became a topic of extensive public and parliamentary debate. This time the targets were imams attached to Salafi mosques, who were accused of concluding Islamic marriages between partners who had not yet performed civil marriages. The regulation prohibiting religious functionaries from concluding such religious marriages, part of the early nineteenth-century institutionalization of civil marriage as the only form of marriage with legal effects, had largely remained dormant until it was revitalized in the course of these 2008 debates on 'Salafi imams'.²⁷ In this case, members of Parliament, including the social democrats (PvdA), the Christian democrats (CDA), the right-wing liberals (VVD), and Geert Wilders's anti-Islam Party for Freedom (PVV), played a pivotal role in turning Islamic marriages into a matter of public concern. The press extensively reported on the parliamentary questions they posed and the investigation of Salafi imams and mosques that the parliamentarians requested. These Islamic marriages were considered evidence of and an instrument for the development of a strictly orthodox Islamic 'parallel society' that deliberately distanced itself from Dutch society. As had been the case with the newspaper articles in 2005, the arguments presented by members of parliament resonated strongly with the reports produced by the Dutch security services (especially AIVD 2007).²⁸

Although two different categories of Muslims were the targets of these two media hypes – first violent jihadist and later Salafi imams – the women entering into these marriages were

24 For an analysis of the media hype surrounding Islamic marriages, see A Moors, 'Unregistered Islamic Marriages: Anxieties About Sexuality and Islam' in M Berger (ed), *The Application of Sharia in the West* (Leiden University Press 2013) 149ff.

25 NCTb, *Informele islamitische huwelijken. Het verschijnsel en de (veiligheids)risico's* (NCTb 2006).

26 Ibid. 26–27.

27 In their report *Informele huwelijken in Nederland: een exploratieve studie* (Universiteit Leiden 2009) 8ff., J van der Leun and A Leupen describe debates in the field of law about the relationship between civil and religious marriages.

28 AIVD, *De radicale da'wa. De opkomst van het neo-radicalisme in Nederland* (AIVD 2007).

framed in similar terms: they were by and large defined as victims. During the first hype it was argued that they were recruited by unscrupulous male extremists who employed 'loverboy-like' practices in order to mobilize the women for the jihad.²⁹ In the case of Salafi imams, the women were viewed as the victims of those who wanted to institutionalize sharia and its assumed gender inequality.³⁰ In the years since these two media moments, debates about these 'Islamic marriages' have engendered attempts to establish laws regulating other kinds of marriage that had become associated with Islam, that is, forced marriages and cousin marriages.³¹

Face veiling: oscillating between a limited and a general ban

In the meantime, face veiling remained an issue of debate and policymaking. Depending on the composition of the coalition government, parliamentarians and policymakers either attempted to impose a general ban or worked towards a number of functional bans (in education, health, and public transport, for civil servants, and in government buildings), with the most recent coalition agreement including a more extensive version of such functional bans.³² The fact that the social democrats also now insisted on imposing a locational or functional ban rather than leaving it up to individual institutions needs to be seen in the broader context of shifts in Dutch identity politics, with policymakers on the right and on the left increasingly agreeing that (post-)migrants will only integrate if the Dutch national identity is more firmly established. The net result is that public discourse and national policymaking have become more explicitly assimilationist, placing increasingly high demands on Muslims in particular to prove their belonging to the nation and their loyalty to the state. The cabinet's 2011 Memorandum of Integration officially declared the end of Dutch multicultural society.³³

Both those arguing for a limited ban and those proposing a general ban link face veiling to women's subjugation. When the cabinet argued for locational or functional bans on face veiling in 2008, specific reference was made to Islamic face veils.³⁴ Analysing the problems that face veils can cause in society, the cabinet argued that they 'hinder open communication, . . . are considered oppressive to women, and, to many, are a symbol of a fundamentalist Islam that does not suit Dutch society'. The cabinet further explained that it 'considers open communication between citizens, participation, and equal chances for men and women essential values of Dutch society and our democratic rule of law'.³⁵ In a similar vein, when in 2012 the cabinet explained its reasons for banning face coverings in all public places, it argued that what matters is 'not the quantity of the phenomenon, but

29 NCTb (n 25) 22.

30 AIVD (n 28) 68.

31 M De Koning, O Storms, and E Bartels, 'Legal "Ban" on Transnational Cousin-Marriages: Citizen Debate in the Netherlands' (2014) 4(2–3) *Transnational Social Review* 226.

32 See coalition agreement, 29 October 2012, <www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2012/10/29/regeerakkoord.html> accessed 5 August 2016.

33 See <www.rijksoverheid.nl/documenten/kamerstukken/2011/06/16/aanbiedingsbrief-integratienota-integratie-binding-burgerschap> accessed 29 March 2017.

34 See the letter to Parliament of 8 February 2008, which argued for specific, functional bans on face coverings: Parliamentary document TK 2007/08 31 200 VII, Nr. 48, 8 February 2008.

35 Ibid. 3.

its fundamental incompatibility with the social order in our country'.³⁶ Such a ban is considered legitimate because it protects an important element of public order: the equal treatment of men and women. The fact that women (and not men) need to conceal themselves is seen as an expression of an unequal position in public life, as 'in our society covering the face is a symbol of women's subordination to men.' Moreover, according to the Cabinet, covering the face hinders women's participation in society and is an obstacle to women's efforts to exert their social and economic human rights on an equal footing with men. In addition, the Cabinet stated that a prohibition would protect those women who might cover their faces because of physical or social pressure from their environment. In this way, a stance against face veiling has become a matter of principle.³⁷

The women involved: an excess of agency?

If both in the case of face veiling and with respect to Islamic marriages the hegemonic discourse frames women as victims, how then do the women engaged in these practices position themselves? In their narratives they refer to two different discourses – one the discourse of religion, of submission to God; the other the liberal discourse of civil rights, in particular freedom of religion, freedom of expression, and non-discrimination.³⁸ Women who wear a face veil refer to religious commitment as their motivating force, whereas among women who have concluded Islamic marriages, some highlight religious considerations while others foreground practical or instrumental reasons.

Wearing a face veil: religion and civil rights

The common denominator in the narratives of women who have adopted face veiling with some level of consistency is their strong commitment to Islam and their desire to become more pious Muslims. For them, wearing clothing that covers more of the body, including a face veil, is first and foremost a recommended or obligatory religious practice. Doing so is, above all, an act of worship and a means to express their love for God. In addition, face veiling functions as a technique of the self, a self-disciplinary practice that produces certain feelings and sensations and helps to shape their actions.

Narrating their move towards adopting a face veil, the women concerned adamantly distance themselves from any suggestion of force or social pressure. Instead, they frame their motivations in terms of affective experiences as well as of acquiring Islamic knowledge. Some women had started to wear the face veil because of an intensely felt urge to do so. For others, it was through learning about Islam that they understood the need to change their appearance. For many it was a combination of both. Whereas some appreciated a literal interpretation of the central texts and followed the opinions of Salafi-oriented religious

³⁶ See the Explanatory Memorandum to the 2012 Draft Law banning face coverings in all public places: Parliamentary document TK 33165 nr. 3, 6 February 2012.

³⁷ *Ibid.*, 2.

³⁸ Starting ethnographic fieldwork with face-veiling women in 2007 and with women concluding Islamic marriages in 2009, I have conducted topical life-story interviews with more than 20 women who either wore a face veil, had done so previously, or were seriously considering doing so. I have collected in-depth information about how women have concluded Islamic marriages and their motivations for doing so in more than 20 cases. In addition, I have had numerous informal conversations with women engaged in these practices.

scholars, they all agreed that, because there is a difference of opinion among Islamic scholars over whether wearing a face veil is obligatory or not, they had to use their own judgement and evaluate the evidence themselves. They also pointed out that if wearing the face veil is to serve as a genuine act of worship, one needs to do it with a pure intention in order to please God. Such an emphasis on the importance of intentionality resonates with the liberal discourse of personal autonomy and choice and stands in strong opposition to the portrayal of these women as pressured by their environment to adopt face veiling. On the contrary, their narratives time and again highlight how their families as well as their husbands have tried to convince them not to cover their faces, sometimes because they fear for their safety.

In discussing attempts to ban face veiling, the women concerned employed a liberal civil rights discourse and pointed to the inconsistencies and double standards that, in their eyes, characterize arguments to implement such a ban. They considered the bans to be not only an infringement of their freedom of religion, but also of their right to be able to choose how to appear in public and what to wear like other women in the Netherlands can do.³⁹ To them the ban was a form of discrimination because it excluded face-veiling women from access to education, health care, public transport, or, in the case of a general ban, all public space. More generally, they also pointed out that there are other categories of women, such as orthodox Christian women, who prefer not to work outside the house when they have small children and for whom immaterial, religious values are more important than paid employment, yet these women are not similarly targeted. While they recognize that their style of dress in public may create a sense of discomfort, they also pointed out that there is a much wider range of sartorial practices, forms of body language, and behaviour that may also cause a feeling of unease among the general public. Only in the case of face veiling, however, do such feelings become grounds for legislation.

Concluding Islamic marriages: religious and practical motivations

Islamic marriages are not a new phenomenon in the Netherlands. Among (post-) migrant Muslims, Islamic marriages were sometimes concluded prior to civil marriages because people adhered to the sequence of rituals common in their country of origin, where there could be a considerable lapse of time between concluding the marriage contract and celebrating the wedding, which signalled the moment of cohabitation. If they followed the same sequence in the Netherlands, then the civil marriage was usually concluded close to the wedding. In more conservative circles, the period 'in-between' concluding the marriage contract and celebrating the wedding was sometimes used as a 'dating period'.

There were, however, also more specific reasons for the parties concerned to first (or only) conclude an Islamic marriage. Some couples simply were not able to enter into a civil marriage because, for instance, they did not have legal residency status or did not have the required documents. Others did not fulfil the conditions for a civil marriage because they were too young or were already married. Some also preferred not to conclude a civil marriage because they considered it financially too disadvantageous. In all these cases couples

³⁹ See also the petition and the letters posted on the Facebook page *Blijf van mijn niqab af* ('Hands off my niqab'), an initiative of face-veiling women in response to the latest threat to implement locational and functional face-veil bans in the Netherlands; see <www.facebook.com/blijfvanmijnniqabaf/> accessed 1 July 2016.

might conclude an Islamic marriage if they felt the need to conform to the expectations of their own social circles or because they themselves were strongly convinced of the necessity to make their relationship *halal* (permissible under Islamic law). In other words, for some the main reason to conclude an Islamic marriage was more instrumental, accommodating the desires of their families, while for others religious conviction was the driving force.

Some young couples opted for an Islamic marriage in order to appease their parents. In more conservative Muslim circles in the Netherlands, parents may find it hard to accept that their sons, and even more so, their daughters, are involved in 'a dating relationship'. The couple may then feel strong social pressure to enter into a marriage for which they themselves do not yet feel ready. In such cases, concluding an Islamic marriage may be a convenient solution. To their parents and the community at large, dating is more acceptable once the Islamic marriage contract has been concluded. Such an Islamic marriage may, occasionally, also function as a means for women to convince their families to agree to a marriage with the man of their choice. Although family pressure in circles of Muslim migrants, especially those who have been present in the Netherlands for a longer time, has gradually diminished, parents may still refuse to accept the partner a daughter has chosen. Some may, for instance, be hesitant about a partner from another ethnic background, or one who is not a born Muslim but has converted to Islam. Once the Islamic marriage has been concluded, parents may well resign themselves to the situation, realizing that there is not much they can do.

There are also couples for whom religious considerations are the main motivating force behind concluding an Islamic marriage. For them, an Islamic marriage is their first priority because it makes their relationship *halal*. They often strongly support the normative notion of gender segregation and reject the idea of free dating. Before the marriage contract is concluded, the couple only meet a limited number of times, always in the company of others or in a public setting. They use these meetings to exchange ideas about their concerns and ambitions, what they expect from each other, and how they would like to organize their marital life. Such Islamic marriages are not only very different from the Dutch mainstream notion of dating and marriage, but also from those arranged marriages among (post-)migrants, when parents focus more on family relations and material matters than on character and religiosity. Still, their commitment to an Islamic marriage does not imply that they reject a civil marriage. Rather, they deal with the civil marriage in a pragmatic manner. At some point in time, they may well conclude a civil marriage because it is the most convenient way to organize the relationship with their spouses and children (including paternity) and to guarantee certain material rights, such as entitlements to a spouse's pension and rights to a share in any inheritance that may be forthcoming. In doing so, they act much the same way that non-Muslim Dutch do when dealing with the question of whether to officially marry or not.⁴⁰

Women's autonomy, agentic power, and liberal-secular rule

Face veiling and concluding Islamic marriages are strong examples of minority women engaging in practices the majority considers detrimental to them. In order to better understand

40 In the course of the last 30 years, the Netherlands has witnessed a trend towards increasingly informal marriages. A growing number of couples simply cohabit without entering into a civil marriage or concluding another form of contract; see J Latten, 'Trends in samenwonen en trouwen. De schone schijn van burgerlijke staat' (2004) 52(4) *CBS Bevolkingstrends* 46.

the divergent positions governmental actors and the women concerned take up, it is not very helpful to frame these contestations in terms of the presence or absence of personal autonomy. Instead, we need to engage with the different notions of agentic power and liberal-secular rule that the various parties concerned employ.

As is evident from the above, in these debates one particular trope was persistently present, that is, Muslim women's lack of autonomy. In the hegemonic discourse the women concerned were framed as victims of the men of 'their own community' and as suffering from a particularly strong form of gender oppression. State actors have often taken for granted that Islamic practices such as covering the face and concluding an Islamic marriage are signs or instruments of women's subjugation. This is not surprising when we consider the long history, dating back to colonial times, that links such practices to Muslim women's gender subordination.⁴¹ Moreover, to a liberal secular public, engaging publicly in religious practices in itself stands in a tense relationship to the notion of personal autonomy. In the Netherlands this is further compounded, as such practices may well evoke memories of the old system of pillarization that many consider a relic of the past. It is not so much these acts in themselves – covering the face with a thin piece of cloth or conducting a private ritual and calling it a marriage – that are deemed problematic. Rather, what turns these acts (*Islamic* face veils and *Islamic* marriages) into particularly pressing problems in need of regulation is the fact that those engaging in them are Muslim women inspired by Islamic motivations.

Yet the women themselves often deny being pressured into wearing a face veil or entering into an Islamic marriage; they insist that they themselves have opted to do so, more often than not against the wishes of the people closest to them in their immediate surroundings. Those driven primarily by religious motivations – virtually all women who wear a face veil more or less consistently and many of those who conclude an Islamic marriage – stress that they opted to engage in these practices as a form of worship and submission to God, as part of their project to live a pious life. The notion of individual agency this entails does not start from an inert desire to be free of restraints; rather, these ethical practices may more productively be seen as a form of wilful submission.⁴²

At the same time, while these women's acts are not motivated by resistance to authority, their desire to follow religious prescriptions pushes them to oppose both mainstream and minority cultural practices. Moreover, those who conclude Islamic marriages mainly for instrumental reasons often accommodate some cultural-religious practices (no free dating) and reject other cultural practices (forced marriage). In other words, when they opt to wear a face veil or to conclude an Islamic marriage, the women concerned cannot simply be defined as lacking autonomy or agentic power. Rather, what is at stake is that state actors and the wider public deem the forms of agentic power they exert to be undesirable.

41 I. Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (Yale University Press 1992); M. Yegenoglu, *Colonial Fantasies: Towards a Feminist Reading of Orientalism* (Cambridge University Press 1998).

42 This builds on Mahmood's argument about the ethical practices of women involved in the mosque movement in Egypt. She warns against equating agentic power solely with resistance to authority or domination. Instead, she proposes a broader understanding of agentic power as 'a capacity for action that specific relations of subordination create and enable' (ibid. 17; 28), which can include wilful submission; see S. Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* (Princeton University Press 2005).

This is also evident when we shift the focus from engaging in religious practices to attempts to prohibit them. When they reject attempts to ban such practices, many of the women concerned employ a liberal-secular discourse and claim their rights as citizens. In doing so, they engage in the cultural politics of national belonging. Whereas politicians have increasingly emphasized the need for a stronger and more homogeneous notion of Dutchness, these women draw on alternative notions of Dutchness, be it the pillarized system of governance or 'multicultural tolerance', to argue respectively for the right to practise their religion in orthodox ways and for the right to opt for an alternative lifestyle.

While it has not been possible to implement a general prohibition against wearing face coverings or to prevent Islamic marriages, problematizing these practices has nonetheless had material effects. Not only has it engendered lower-order regulations (for instance at educational institutions) and triggered indirect legal consequences (such as legislation restricting cousin marriages),⁴³ it has also produced particular categories of people. Problematizing certain practices (and not others) marks some people as belonging to a stigmatized minority driven by particularistic interests and simultaneously enables the majority to position itself as the unmarked category representing the public and the common good.⁴⁴ As majority and minority positions are always inherently unstable, debates about face veiling and Islamic marriages are performative in the sense that they contribute to the (re-)constitution of particular majority and minority positions. Whereas donning a face veil and engaging in an Islamic marriage are seen as imposed on women, majority practices in the fields of dress and marriage are self-evidently considered expressions of individual autonomy.⁴⁵ This force-versus-choice binary overlooks how the ability of all individuals to exert agentic power is always constituted through processes of subjectivation, that is, subject formation through submission to normative structures.⁴⁶

To better understand the positions various actors take up in contestations about face veiling and Islamic marriages, we need also to briefly turn to the notion of liberal-secular governance. To many of the women concerned, adopting a face veil and concluding an Islamic marriage are religious practices. Liberal-secular forms of governance claim to be grounded in the separation of church/religion and state, as well as in the divide between the public and the private, with the former the domain where public opinion is shaped through rational deliberation and the latter the sphere of intimacy, passions, and emotions. In practice, however, the secular state does not simply relegate religion, sexuality, and family relations to the private sphere; it also defines and regulates these fields and in doing so categorizes some forms as more acceptable and other forms as less acceptable and even beyond the pale of what may be tolerated.⁴⁷ Face veiling and Islamic marriages are deemed problematic

43 De Koning et al. (n 31).

44 Mah, Harold, 'Phantasies of the Public Sphere: Rethinking the Habermas of Historians' (2000) 72 *The Journal of Modern History* 153, 167ff.

45 W Brown, *Regulating Aversion: Tolerance in the Age of Empire and Identity* (Princeton University Press 2006).

46 For a discussion of how this works in the case of dress, see A Moors and E Tarlo, 'Introduction: Islamic Fashion and Anti-fashion: New Perspectives From Europe and North America' in E Tarlo and A Moors (eds), *Islamic Fashion and Anti-Fashion: New Perspectives From Europe and North America* (Bloomsbury 2013).

47 T Asad, 'Trying to Understand French Secularism' in H de Vries (ed), *Political Theologies* (Fordham University Press 2006); S Mahmood, 'Religious Reason and Secular Affect: An Incommensurable Divide?' (2009) 35(4) *Critical Inquiry* 836. Both Asad and Mahmood, who have theorized how secular power

because they are linked to highly undesirable forms of religion and sexuality. In contemporary liberal societies such as the Netherlands, where women's emancipation has increasingly come to be defined in terms of sexual freedom and the public display of women's bodies, the full covering of face-veiling women and the rejection of non-marital sexual relations are viewed as signs of women's oppression. With citizenship increasingly defined in terms of shared values rather than with respect to legal rights and obligations, it has become evident that particular categories of the population are, far more than others, distrusted and required to provide evidence of their internalized commitment to the substantive (majoritarian) values in which regulations and laws are grounded. When the women concerned state that it was their own choice to engage in such practices, state actors in general have great difficulty recognizing such actions as an expression of personal autonomy. In response to the women claiming sameness with other Dutch citizens (in their position vis-à-vis the state), state actors tend to highlight their difference from other Dutch citizens based on the private values they presumably adhere to. One could then argue that the women concerned show a stronger commitment to the proclaimed principles of secular rule – the separation of state and religion, of the public and the private – than those attempting to ban these practices.

has constituted religion as a category in specific ways, have developed this argument with a focus on religion. For insightful discussions about how sexuality and secular rule are intertwined, see especially J Scott, *Sexualism* (Robert Schuman Centre for Advanced Studies Distinguished Lecture, European University Institute 2009; see <http://cadmus.eui.eu/bitstream/handle/1814/11553/RSCAS_DL_2009_01.pdf?sequence=1> accessed 9 February 2017); J Surkis, 'Hymenal Politics: Marriage, Secularism, and French Sovereignty' (2010) 22(3) *Public Culture* 531; M Fernando, 'Intimacy Surveilled: Religion, Sex, and Secular Cunning' (2014) 39(3) *Signs* 685, with the latter highlighting how secular rule simultaneously constructs and trespasses the public-private divide (ibid. 687).