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ORIGINAL ARTICLE

A Word of Caution for Feminist-Decertifiers? The Case of France's Racial Disestablishment

Wilkinson, Sophie
BSc Political Science,
Leiden University, Netherlands

Abstract This thinkpiece studies France's relationship to race/ethnicity through a feminist lens. It explores the French government's unique approach to its citizens' identities which has effectively resulted in the disestablishment (or decertification) of their race/ethnicity. The history and politics of this situation are here evaluated through the lens of a feminist critical legal reform called "decertification". Investigating this case provides a unique, country-level perspective on techniques of governmental deracialisation and insights gleaned from the research are of interest to international feminists interested in the role of identity-markers in activism.

Key Words France; race; gender; disestablishment; decertification.

Introduction

The Future of Legal Gender (FLaG) project is a critical law project aimed at evaluating the potential implications in England and Wales of a feminist reform of the legal gender status, entitled *decertification*. Decertification is a legal situation where 'the state withdraws from registering, assigning, or guaranteeing a person's sex and gender' (Cooper & Emerton, 2020, p. 6), meaning that sex/gender loses a large part of its legal meaning and salience. Devaluing the importance of citizens' identity-markers in this manner would have far-reaching societal implications, imbricated in many ongoing discussions within feminist activism. The FLaG project is also threaded with a global feminist consciousness as one of its goals is to '[draw] on experiences in other countries, the different legal approaches taken towards other social characteristics, such as religion, disability, ethnicity and sexuality' (FLaG, 2022). Looking beyond Great Britain, international examples provide fascinating material that add perspective to FLaG's critical legal reform.

In this context, France is a natural experiment of decertification because of the French government's long-standing administrative tradition of racial disestablishment. Convinced that examining this case can provide useful insights for global social justice activism, this piece asks: *How has race/ethnicity been disestablished in modern-day France? What are its legal justifications and social consequences? What lessons can transnational feminists draw from this case study?* To answer these questions, I draw on data from legal documents, news stories, opinion pieces, historical events, and existing literature to paint a portrait of racial disestablishment in France. Firstly, the omnipresence of racial disestablishment in everyday French legal and administrative practices is contoured. Narrowing the analysis to the Muslim female minority, I trace the historical and ideological basis for deracialisation and question the French government's motivations behind systemic racial/ethnic disestablishment. Then, potential areas for reform are presented before returning to the implications of this analysis for proponents of decertification.

Terminological Specificities:

"Sex" and "gender" are terms that are widely debated in feminist scholarship as well as within public discourse. In the words of FLaG authors, gender can be approached as 'a social phenomenon that produces structural advantage and disadvantage in relation to power, resources, visibility, inclusion, and authority along a range of registers (including women/men, trans/cis, gender/agender)' (Cooper et al., 2022, p. 11); sex, however, is harder to effectively conceptualise and is 'used to refer to bodily processes and parts, to a formal legal status, to living as a woman or as a man, among other definitions' (Cooper et al., 2022, p. 11).

Here, sex/gender and race/ethnicity have been paired, for the sake of analytical efficiency and because these specific distinctions are not entirely applicable to the French context or language. It is also important to remark on the ways in which sex/gender and race/ethnicity differ from each other and are not interchangeable. The main reason for this, identified by Heyes (2006), is that race/ethnicity is inherited in a manner that sex/gender is not. This piece will be focused on the mechanisms of decertification as a procedure (rather than its content, i.e. its citizens' identities). As such – although sex/gender and race/ethnicity are not directly comparable – relevant insights can still be gained from interrogating French decertification as analysing its history should help to reflect on its implications.

On a similar note, "decertification" and "disestablishment" will be used as equivalents, considering the relative lack of terminological debate on the difference between the two. "Disestablishment" has been used to refer to the French example as it indicates "a removal of status", better suited to the gradual removal of status relevant to the French case. "Decertification", on the other hand, is a specific and hypothetical legal framework imagined and scrutinised by the FLaG project and will thus be used only to describe this.

Finally, this project aims to honour the plea of many feminists to adopt intersectionality in academic analysis. Simply put, intersectionality is an analytical framework that considers how identity-markers (such as race/ethnicity, class/income or sex/gender) intersect with each other to create different complex systems of oppression, materialised at the institutional level and crystallised by individual practices. Intersectional approaches have come to form an influential stream of feminist thinking (Crenshaw, 1989) within which this piece seeks to locate itself. Interestingly, Anthias (2012, p. 15) also warns us of 'the danger of fixing some categories and making others invisible', which is arguably what the French state has undertaken and legitimised. With Anthias's concern in mind, the next section will be dedicated to describing the processes behind disestablishment of French race/ethnicity.

French Disestablishment: Philosophy & Practices:

Absence of Racial/Ethnic Data:

Since the 20th century, the French government has become infamous for an approach to data collection that is different from most of its Western European neighbours as racial/ethnic disestablishment has spread to different aspects of public life. For instance, the French census is an important and ceremonial task undertaken by the majority of citizens that is effectively devoid of questions relating to race/ethnicity. Indeed, according to law n°78-17 of the 6th of January 1978, information about one's race, ethnicity (or religious affiliation) is "personal data"[1]. It is thus legally prohibited to record information

[1] Donnée à caractère personnel

about these identity-markers ─ the only potential exception to this is statistics on the parents' place of birth, collected to keep track of migration flows (Le Minez, 2020).

Two types of reasons are given for this absence of collected racial/ethnic data. The first is a pragmatic one: the French government's statistics bureau, the National Institute of Statistical and Economic Studies[2] (INSEE) that conducts the census has in fact undergone multiple reforms in recent years. Due to budgetary concerns, the INSEE's census is now conducted every 5 years in each French city of over 10,000 inhabitants and makes use of statistical randomised sampling the other 4 years to produce complete, annual surveys on the population as a whole (Dumais, 2000). As such, clear formulation and succinctness of the questions have been prioritised to keep both administrative efficiency and response rate high. The second reason is normatively loaded: choosing not to collect racial/ethnic data is justified by and couched in a wider narrative of French "Republican" values where the homogenous attribute of "being French" (i.e. having French citizenship) is considered to be an identity-marker of more direct utility to French policymakers than self-identified race/ethnicity. Beyond its obvious usefulness to academics and civil servants, the census is promoted by the INSEE as being a part of one's 'citizen's duty'[3] (INSEE, 2017). Adequately filling out the census is supposedly a meaningful feature of being a French national, like voting or paying taxes. This makes the census part of the French "public space" or *espace public.* The *espace public*, to which we will return later, is defined here as an idiosyncratic, imagined geography of French public life that the Republican model relies on and where both political community and national identity are realised (Amiraux & Koussens, 2013). In this case, the census is a part of the *espace public*'s apparatus that actively dissolves the French population's ability to report self-identified racial/ethnic belonging.

Disestablishing Community Life:

Beyond the disparities that exist in the formalised census, deracialisation attitudes have extended to the spheres of community life and independent associations. Indeed, the concept of meetings that are designed to gather people with one specific identity-marker (such as a women-only book club or a Buddhist swimming club) has been imported from the United States into French feminism, coined as *non-mixité*. The very phrasing of *non-mixité,* constructed with the French prefix "non-" suggests that *mixité* (i.e. "mixing", or "diversity" in anglophone thinking) is the accepted norm in France, which empirical and anecdotal evidence would tend to contradict. On this, French academia has contributed to showing how *non-mixité* can have a truly emancipatory effect for women speaking in women-only spaces (Talpin, 2018); and a multitude of individual testimonies express the

[2] Institut National de la Statistique et des Etudes Economiques

[3] Citizen's duty

benefits of *non-mixité* for the participants' safety, autonomy and confidence (Dasinières, 2021). While *non-mixité* is something that some British feminists have been wary of losing (in a scenario where decertification is enacted), its emergence under the French public eye has actually created apprehension.

On the one hand, a rich panoply of feminist NGOs exist in France and host, de facto, *non-mixité* meetings, as only women appear to attend them (Dasinières, 2021). On the other hand, racial/ethnic *non-mixité* has recently come under fire, which has resulted in its policing. Indeed, as of the 1st of April 2021, the French Senate mandated the dissolution of association meetings that 'prohibit a person or a group of people from participating in a meeting due to their [skin] colour, their ancestry or their (non-)membership to an ethnicity, race or a designated religion'[4] (Chambraud, 2021). The law was voted after the National Union of Students of France[5] (UNEF) came under fire for conducting meetings in racial *non-mixité* for students to discuss their experiences with racism (Bonassin, 2021). The *UNEF amendment* is part of President Macron's ambitious legal project 'for the reinforcement of the Republic's principles'[6] (Macron, 2020), more commonly referred to as the "*separatism law*"[7]. This has been a cornerstone of his mandate, explored further later. For now, what can be taken from the UNEF amendment is that France's practice of disestablishment is taken literally and seriously by its past and incumbent governments, illustrated by the policing and criminalisation of groups who aim to erect safe spaces within the boundaries of racial/ethnic identity-markers.

The French Anti-Discrimination Framework:

A brief outline on the French legal conception is presented here, to complete the depiction of the disestablished context. French legislation is not dissimilar to its European neighbours: discrimination is illegal and is defined in France as unequal or unfavourable treatment of certain people according to set criteria. These criteria include, according to Article 225-1 of the French Penal Code: one's ancestry; sex; familial situation; pregnancy; physical appearance; economic vulnerability; name; place of residence; health; loss of autonomy; disability; genetic make-up; lifestyle; sexual orientation; gender identity; age; political views; union activity; fluency in a language that is not French; and

[4] "Qui interdisent à une personne ou un groupe de personnes à raison de leur couleur, leur origine ou leur appartenance ou non-appartenance à une ethnie, une nation, une race ou une religion déterminée de participer à une réunion"

[5] Union Nationale des Étudiants de France

[6] Projet de loi confortant le respect des principes de la République

[7] Loi séparatisme

(finally) membership or non-membership, real or presumed, to an ethnicity, a Nation, a supposed race or determined religion[8] (Code Pénal, 2016).

To this long list of legal criteria, two interesting nuances have been added. Firstly, French law distinguishes between *direct* and *indirect* discrimination. While *direct* discrimination corresponds to the literal definition of "unequal or unfavourable" treatment, *indirect* discrimination describes a situation that is in fact systemically unequal or unfavourable to a certain group of people, although no prohibited discriminatory practice has led to that situation. Adjudicating the existence of *indirect* discrimination necessitates a legal analysis, which is arguably facilitated by access to data about the alleged discrimination. As such, the absence of racial/ethnic data does seem to be an obstacle to investigations into cases of *indirect* discrimination, especially when it comes to showing evidence of discrimination – the focus of the court is then on investigating if the accused behaviour was discriminatory. For instance, in a case of employment discrimination, it will be investigated whether or not the employer's decision was made discriminatorily, not if the plaintiff belonged to a certain category. The fact that employer's motivations are oftentimes confidential and generally difficult to scrutinise, coupled with the lack of statistics on identity-markers (such as race/ethnicity), means that French judiciary deals with an exceptionally low number of reports of race-related discrimination (Sägesser, 2005).

Moreover, it can also be argued that discrimination might be conceptualised differently in France than in other parts of the world. As discussed, while meetings in *non-mixité* (discussed above) are seen as beneficial (if not crucial) for minorities in other parts of the world on grounds of inclusion, the French *UNEF amendment* criminalises racial *non-mixité* on the grounds of discrimination. Secondly, a distinction exists surrounding the nature of the defined criteria upon which it is possible to discriminate. Indeed, French law typically view categories such as ethnicity or sex as *intrinsic* to a person while features such as philosophical or political views are *extrinsic* to someone – and categories such as name, place of residence or physical appearance are somewhere in the middle of this spectrum, as they are *intrinsic* yet subject to change. It can be noted that in the eyes of the French legal system, race/ethnicity remains an *intrinsic* feature, a signifier of importance which contrasts with the French government's deracialising attitudes.

[8] "Constitue une discrimination toute distinction opérée entre les personnes physiques sur le fondement de leur origine, de leur sexe, de leur situation de famille, de leur grossesse, de leur apparence physique, de la particulière vulnérabilité résultant de leur situation économique, apparente ou connue de son auteur, de leur patronyme, de leur lieu de résidence, de leur état de santé, de leur perte d'autonomie, de leur handicap, de leurs caractéristiques génétiques, de leurs mœurs, de leur orientation sexuelle, de leur identité de genre, de leur âge, de leurs opinions politiques, de leurs activités syndicales, de leur capacité à s'exprimer dans une langue autre que le français, de leur appartenance ou de leur non-appartenance, vraie ou supposée, à une ethnie, une Nation, une prétendue race ou une religion déterminée."

"State-Making" Theory:

A short overview of theoretical contributions completes this picture of French disestablishment. In line with the Foucauldian concept of "governmentality", the sociologist Pierre Bourdieu described the 'practical operations by which groups are produced and reproduced [to] make states' (Bourdieu, 1989, p. 23). This state-making theory exposes how administrative and statistical procedures are more than just bureaucratic indicators, they also serve to shape one's perception of oneself and of others. In studying the Scottish census questions about sexual orientation, Guyan found that 'the design of the census partly facilitates the state's capacity to govern' (2021, p. 9). When it comes to French community life, similar thinking applies: although not quite as formalised, the government's choice does demonstrate the intention of creating and fixing specific "governable" social groups. The French government's decision to thoroughly disestablish race/ethnicity while never challenging the certification of other identity-markers (such as sex/gender or income level) is not an arbitrary one. At the level of public recognition, the French government is seeking to construct a population that can be gendered or classed, but not racialised or ethnicised: it homogeneously fits into the neutral category of "being French", as defined by a tick in the corresponding box of the census. Where does this insistence come from and why does it persist in French politics?

French Disestablishment: Origins, Development & Controversies:

This section focuses its analysis on the systematic disestablishment of a specific minority in France: Muslim women. This group has been chosen as it exists at the intersection of racial and sexist discrimination, and has been the centre of some well-documented and recent controversies within French domestic politics and international news cycles. Particular attention will be paid to Muslim women who wear the Islamic veil as it is an identity-maker of a faith that has been 'religiously racialised' (Galonnier, 2019, p. 30). This racialisation of Islam in France means that an investigation into women wearing the Islamic dress can give insights into the implications of France's racial disestablishment.

Legal and Societal Backdrop:

On the 24th of August 2016, a woman wearing a so-called burkini (a swimsuit covering the whole body except for the face, the hands and the feet) on a beach in the South of France was stopped by 4 police officers, asked to remove her coverings and issued a fine for her choice of swimsuit (BBC News, 2016). The policemen in this incident were following the stipulations of a "burkini ban", enacted by the mayors of the towns of Cannes and Nice, that declared this type of swimwear inappropriate for the French *espace public* as they could represent a link to Islamic extremism (BBC News, 2016). Although these locally administered bans have since been lifted (Libération, 2016), they are not

anomalies within French legislation. On the 15th of March 2004, clothing and/or accessories conspicuously showing a pupil's religious affiliation were outlawed within French public schools according to law n°2004-228. In addition, law n°2010-1992 has banned French citizens from wearing full-face coverings in the *espace public* since 2010. How is this possible in a France that does not see nor recognise identity-markers?

"Laïcité" at the Centre:

These disestablishing provisions are all based on the same legal principle of "laïcité" which is specific enough to France to merit its own elaboration. In France, *laïcité* is a form of heightened secularism where the state is in essence completely separated from civil society and religious communities. According to the French government, *laïcité* rests upon 3 fundamental principles: 1) the freedom to practise one's religious beliefs within the boundaries of the *espace public*; 2) the separation of public and religious institutions; and 3) the equality of all French citizens before the law (Ministère de l'Intérieur, 2015). In other words, the state can intervene in religious matters but religion cannot interfere in state matters (Aune et al., 2017). This *laïcité* is a treasured concept within French governments that has remained relatively intact since its inception during the French Revolution (Silverman, 2007) and is largely perceived as a pillar of French democracy.

Laïcité has been commented on with some unease by international feminists as it is an abstract concept that clearly resides within the imagined *espace public.* The underlying assumption – that it is possible to clearly and unproblematically separate a "private" matter (like one's religious convictions) from "public life" – also heavily contradicts much feminist activism (Aune et al., 2017) that has fought hard to demonstrate how oftentimes, for women, 'the personal is political'. The repercussions of *laïcité* are indeed anything but abstract. In its stricter interpretations, signals of religious beliefs must be absent (or removed) to guarantee true Republican neutrality in the *espace public.* Put simply, while secularism could have allowed for the women of Nice to wear their burkinis on the beach if the State did not intervene with their religious affairs, *laïcité* posits the removal of their Islamic dress to guarantee a truly secular *espace public.* This insistence on disestablishing minority ethnic identities makes France a European oddity.

French Disestablishment: Causes & Consequences:

Intrigued by the French case, the preceding literature has identified two potential reasons for this governmental dedication that are presented in the following sections.

Permanence of (Neo-)Colonialism:

Initially given political meaning in 1905, the term *laïcité* has gained prominence – a tendency that can be attributed to the permanence of France's colonial past, specifically

in Northern Africa. Brayson (2019) has traced the long history of policing "colonial" bodies that began during France's colonial era. On this, she denounces a lack of information and of understanding of Islam within continental France as 'knowledge [of the Islamic dress] continues to be produced through the epistemic lens of the colonial condition and resurfaces under the contemporary label of Islamophobia' (Brayson, 2019, p. 81). On this, the public "unveiling" of Algerian Muslim women is an episode of French history that comes to mind. In 1958, French leaders took on the mission of "liberating" native women from the Islamic patriarchy – a patriarchy perceived as inherently more oppressive and dangerous because it was Islamic, or rather Arab (Bentouhami, 2018). On the 18th of May, as the tensions of the Algerian war were rising, the Organisation Armée Secrète (OAS) publicly staged an "unveiling" ceremony where seemingly ecstatic Algerian women had their Islamic hijab and niqabs removed by (white) French women – an act meant to embody the beginning of their "liberation" (Sereni, 2016).

According to Bentouhami (2018), the underlying logic was that Muslim women needed to be saved either from their men or from themselves as their head coverings were symbols associated with male domination and with Islam – two forces working in tandem to oppress them. Although we now know that the OAS's performance was both largely staged (Fanon, 1959) and a failed operation, this 'colonial fantasy' (Sereni, 2016, p.1) illustrates essentialising 20th century French attitudes towards colonised Muslim women. This chapter in French public memory exposes the pre-conceived idea that Muslim women inherently need to be liberated, not because they are women but because they are Muslim. In postcolonial literature, this scene would exemplify the term coined by Spivak (2003) of "white men saving brown women from men". As such, the OAS's "liberation" effectively took on the form of a forced Westernisation where Algerian women were encouraged to be freer by presenting themselves according to Western French norms. A postcolonial lens begins to expose some of the ways in which a *laïcité* that is designed to be universal effectively criminalises the Islamic dress as the concept is politicised and its neutrality is corrupted.

"National Identity" to the Rescue of National Security:

A newer phenomenon in French history also helps to interrogate the place of Muslim women in modern-day France. Since the mid-2000s, France has been the victim of a wave of terrorist attacks of which an increasing number has been claimed by the fundamentalist organisation of the Islamic State (ISIS) (or Daesch). This trend reached a culmination point in 2015, when the capital underwent a series of coordinated attacks on the 13th of November, shocking the international community and resulting in public calls for a change in France's national and foreign security policy.

On this, scholars have described a 'societal and identity chaos where the instrumentalization of Islam helps create the need to claim and preserve one's national

identity'[9] (Mballo & Bourget, 2018, p. 255). According to this critique, Islam is currently being used as a fear-mongering scapegoat within French politics: in fighting for protection from a specific terrorist organisation, Islamophobic messages and misconceptions are being conveyed and fostered by the French government. Specifically, Najmabadi (2006) has traced how the Islamic veil, although having a rich and diverse history, has progressively been constructed as a homogenised signal of female deviance, far removed from a Republican *laïcité* that is embodied by the neutrality of (Western) clothing. Here, the issue of "national identity" resurfaces and is constructed in opposition to a fearful enemy rather than through the unity of "being French". Within the context of a perceived renewed urgency to protect national security, the French government arguably reinforces the symbolism of the "national identity" and finds great use for a 'femonationalist' discourse (Bentouhami, 2018, p. 3). The Islamophobic undertones of this discourse epitomise the imaginary of a common enemy to be fought.

Considering these arguments, Emmanuel Macron's proposal for the *separatism law* can also be re-evaluated. Seeking to address concerns about the perceived rise of a fundamentalist and dangerous Islam within domestic France, the *separatism law* includes a host of proposals – from changes to urban planning to the UNEF *amendment* – meant to "reinforce republican principles"[10] (Macron, 2020). While the law is not finalised at the time of writing, its main discursive assumptions were set out in a speech given in the Yvelines region in October of 2020. In this speech, President Macron speaks of an 'Islam particular to France' and 'a form of Islam in our country that is compatible with Enlightenment values' because 'We aren't a society of individuals. We're a nation of citizens' (Macron, 2020). The President went on to present the legal project as necessary to guarantee the 'Republic's promise of empowerment' and into detail about the government's anti-radicalisation plan (Macron, 2020). Both the agenda of Westernisation and of national security (outlined above) are clearly present in this speech; indeed, the insistence on encouraging a specific type of Islamic behaviour – one that would be appropriate within the Republic – is presented as both beneficial for Muslim minorities and necessary to protect French "national identity".

The Consequences of Instrumentalizing "Laïcité":

In short, although the French Republic is allegedly racially and ethnically disestablished – to guarantee the permanence of universalist and fundamental principles such as *laïcité* that its democracy is based upon – harmful, Islamophobic discourses allow for ostensibly Muslim and female bodies to be criminalised within the blind spot opened up by a neutral *laïcité*. While *laïcité* is supposed to guarantee neutrality of the French state, a

[9] "Un désordre identitaire et sociétal où l'instrumentalisation de la religion musulmane participe à créer un besoin de revendiquer et de préserver son identité nationale"

[10] Conforter les principes républicains

Westernisation agenda and a perceived renewed threat to national security have meant that French citizens find themselves constrained to observe neutrality of religion. In particular, the essentializing nature of *laïcité* has here been demonstrated to be largely harmful to Muslim women: the space opened up when a state prioritises the homogeneity and disestablishment of its population's identity-markers allows for the criminalisation of some minorities' bodies.

The current legal French rhetoric appears to purposefully ignore that there are an almost infinite number of ways to be French: France has a rich history and colonial past; a complex demographic make-up that is constantly altered by migratory fluxes; and is home to an array of different cultural groups, rituals, practices and beliefs. In light of this, it is not surprising that the falsely homogenous category "French" is insufficient to characterise its population, and attachment to this category can be harmful to French minority groups.

Moving forward:

The universalist lens adopted by the French government purposefully forgets that Muslim women who wear Islamic dress in France find themselves at the intersection of three criteria of discrimination: gender, ethnicity, and religious affiliation. As a direct consequence, 80% of victims of Islamophobic assaults in France in 2015 were women (Lallab, 2016). The gravity of this situation goes to show how being visibly female and Muslim in France is inherently a triple burden which only an intersectional approach can expose. What can be done, and what would these proposals mean for French society?

Reporting Race/Ethnicity: Towards a Non-Discrimination Framework?

As it has been stressed, the French tradition of disestablishing racial/ethnic data collecting makes France an exception on the international scene. Most countries tend to record this identity-marker, although the practice varies widely. For example, Brazil's census asks about skin colour, the Canadian measures relies on racial "visibility" while Russia enquires about ethnic affiliation taken to mean nationality (Galonnier & Simon, 2020). The discussion amongst French thinkers is seemingly divided along the following lines: on the one hand, there is some form of consensus that collecting data about the distribution of race/ethnic identity-markers is the single best way to fight systemic inequality (Safi, 2018). On the other hand, anxiety exists about choosing to describe racial/ethnic identity-markers as this would reinforce a social (and then political) group conscience that is irrelevant in the demographer and policy-making spheres (Safi, 2018; Renault, 2021).

The empirics presented here suggests that the current situation appears to do little to prevent discrimination, although it is allegedly designed to discourage an overly strong presence of a group or community mindset. Recently, international organisations have

followed a similar line of thinking: alarmed by instances of discrimination in France, the United Nations has recently urged France to introduce racial/ethnic data collection in order to fight systemic racism (Oltermann & Henley, 2020). President Macron's suggestion to emphasize anti-discrimination mechanisms (Renault, 2021) also appears complicated to enact, precisely given the lack of data on which to base such mechanisms. The French social sciences must choose between either continuing in this way or starting to look towards international best practices on ways to fight discrimination – albeit based on some form of recording of racial/ethnic minority identity-markers.

Reframing the Reality of Non-Mixité:

In addition, the reality of *non-mixité* must be re-framed since its aims and mechanisms appear to be widely misunderstood as inherently incompatible with the Republic. Indeed, the left-wing politician Manuel Valls has expressed concern that racial *non-mixité* meetings legitimise the concept of race, while Fabien Rousssel of the French Communist Party has insisted that such meetings would weaken the side fighting for equality (France Inter, 2021). Some politicians, on the other hand, have made the instinctive comparison with feminism: Éric Coquerel declared that 'Non-mixed meetings are as old as the feminist movement'[11] (France Inter, 2021); the senator Laurence Cohen said, for her part, that such meetings are merely "speaking groups"[12] and were essential to her feminist education (Geny, 2021). Faced with this wave of criticism, Mélanie Luce – the President of the UNEF at the time of the UNEF amendment affair – has expressed the necessity to nuance the concept *non-mixité*: no decisions are taken during these meetings, they are mainly designed to facilitate free and safe conversation for people affected by a specific issue in the first place. From the insights of these conversations, possible methods and tools to combat this issue are discussed in plenary meetings (Luce, 2021). This explanation resonates well with the research that finds *non-mixité* to be an emancipatory environment, as demonstrated in the case of women (Talpin, 2018) or even Muslim women (Mballo & Bourget, 2018).

In a France that seeks to permanently disestablish identity-markers, the necessity to reframe *non-mixité* meetings as protective and necessary rather than exclusionary is all the more pressing to stop their prohibition. As indicated before, such a reframing would require leaving behind the discourse of a threatened national identity and adopting a postcolonial lens. Moreover, considering the lack of executive power these speaking groups have, critically evaluating the necessity of criminalising them might also be relevant for policymakers.

[11] "Les réunions non-mixtes, c'est vieux comme le mouvement féministe"

[12] Groupes de parole

Rewriting law n°2004-228 and n°2010-228:

Finally, an important sphere to tackle in terms of reforming French disestablishment is the legal framework that supports it. Much has previously been written about the iconic *1905 law* – a legal document dated the 9th of December 1905, dealing with the separation of Church and State[13] – and the possibility of reforming it. Focus could however be shifted away from the *1905 law* as it has already been modified nine times – the original text mainly concerned itself with stopping the funding of churches by the State, which was relevant in the early 20th century (Poulat, 2005). For those concerned about the implications of modern-day *laïcité*, attention could be paid to more recent and specific legislation: law n°2004-228 banning clothing that conspicuously shows religious affiliation in public schools, and law n°2010-1992 banning full-face coverings in the *espace public.*

Regarding law n°2004-228, many commentators have exposed its racialised nature. It should be recognised that although the law does not explicitly cite any religious symbols, it disproportionately targets the Muslim population – and more specifically Muslim girls practising modesty for religious reasons. Indeed, it has been remarked that in France, more opportunities exist for enrolment in private Jewish schools; Sikhs have successfully lobbied for the right to wear an under-turban; and no tradition of conspicuously modest clothing exists for Christian children (Fredette, 2015). Ironically, while some middle and high-school students have reported being sent home for wearing ankle-length skirts (suspected of an association with Islamic dress), Emmanuel Macron has recently expressed that he does not believe that outfits that do not entirely cover pupils' stomachs (or "crop tops") are appropriate for school (Lasserre, 2021). Dissonances like these further demonstrate the inconsistencies and complexities that might arise when governments decide to police what female minors wear to go to school, and thus the difficult homogenous application of law n°2004-228. France's legislation also has the added feature of having to interact and be compatible with European Union law. Therefore, the discussion on reforming law n°2004-228 and acknowledging that it effectively discriminates against French Muslims goes beyond the borders of France as it touches upon subjects such as the emerging notion of cultural rights, the role of public education, and the rights of the child (Costa-Lascoux, 1997).

Regarding law n°2010-1992, international outrage has provided further insights into the wider implications of banning full-face covering in an imagined *espace public.* This interpretation of *laïcité* has once again clashed with international legal regimes. On the 6th and 21st of November 2011, after two women from Nantes were fined 150 euros for wearing niqabs on the street, the United Nations Human Rights Committee (UNHRC) reviewed law n°2010-1992 and found itself highly critical of it (Conaré et al., 2019). The UNHRC mainly found that text n°2010-1992 was not legally necessary nor proportional

[13] Concernant la séparation des Églises et de l'État

to the issue and had no legitimate goal. Agreeing that the law was designed to target the Muslim, female population, the UNHRC made a historic first use of the term "intersectional" as the conditions created by law n°2010-1992 were characterised as creating a situation of 'intersectional discrimination' (Conaré et al., 2019, p. 17). A note can be added as one of the elements of the French defence declared that 'the face plays a crucial role [in social life] as that is where two people speaking to one another recognise their shared humanity'[14] (Conaré et al., 2019, p. 10). Considering that the ongoing Covid-19 pandemic (at the time of writing) has resulted in the widespread usage of medical face masks, interdisciplinary research about the necessity of seeing others' faces to guarantee a harmonious *espace public* could enlighten academia further as to the validity of this argument. Although the UNHCR's verdicts are not legally binding in any form and the French government is free to ignore any concern from international actors (and has done so thus far), France's minorities might benefit from these calls to action being considered. Here, it must be emphasized that the suggestion to review laws n°2004-228 and n°2010-1992 stems simply from the observation that these texts are disproportionately discriminatory towards the Muslim, female French population. To be sure, this piece does not represent a call to rewrite the 1905 law; it is only a proposal to acknowledge the ways in which *laïcité* might be racialised in a Republic that boasts about the legal equality of its citizens.

Implications for feminist-decertifiers:

With the picture of French racial disestablishment painted, we briefly return here to FLaG's proposal to remove the state's capacity to register and make use of a citizen's sex/gender. As it has been discussed, France represents an interesting case in the climate of the FLaG project. While FLaG proponents are in part troubled with a perceived English and Welsh hyper-establishment of the sex/gender identity-marker, this analysis has sought in part to demonstrate what issues can arise in a situation of disestablishment. What does the French example teach us about the viability and benefits of sex/gender decertification?

On the one hand, the French example presents a word of caution for decertifying feminists. Before removing a legal sex/gender category from individuals, researchers would benefit from identifying what pre-existing political dynamics exist in that region which could be captured or crystallised during the process of decertification. Feminists seeking to decertify sex/gender in a jurisdiction such as England and Wales should pay attention to the effect domestic politics could have on the decertification process; namely, the conditions and context under which decertification would arise as a proposal. Possible

[14] "Le visage joue un rôle crucial [dans la vie sociale] puisque c'est la partie du corps où se reconnaît l'humanité de l'individu partagée avec son interlocuteur"

examples of such political dynamics would be the heated debate surrounding trans rights in the United Kingdom, or British colonial and migratory history.

On the other hand, the French example nonetheless illustrates how homogenising social categories such as "being a woman" or "being French" can injure the people they describe. FLaG's decertification proposal stems in part from the consideration that there are an almost infinite number of ways in which to be a woman. As such, decertification seeks to open up the "female" category, which fallaciously paints with one brush a population that is incredibly multifaceted, and at the intersection of many other identity-markers. Strikingly similar things can be said for the racialised category of "being French": racial disestablishment in France helps us understand how the very universalism that makes these categories politically desirable can be dangerous for the people they describe. This situation goes to further emphasise the necessity to adapt our identity-markers, i.e. what the FLaG project hopes to address: the people in the "woman" category would benefit from its decertification, whether that be through its opening up or cancellation.

Conclusion(s):

This thinkpiece has aimed to paint a picture of the French government's deracialised attitudes to its citizens' identity-markers. It has first described the French government's rigorous racial/ethnic disestablishment which is embodied in its absence of racial/ethnic data collection. This disestablishment is then perpetuated by a legal framework that incompletely addresses discrimination and prohibits meeting in *non-mixité*. Secondly, this piece has aimed to partly debunk the blindness of the principle of *laïcité* that these policies are based upon. This has been done by demonstrating how the alleged neutrality of *laïcité* has in fact enabled its politicisation and racialisation, which was prompted by a neo-colonial agenda that has chosen to prioritise a supposedly threatened "national identity". The research has suggested that in order to live up to the principles it is based upon, French disestablishment might advance by critically evaluating its statistical traditions, the disproportionate influence of *laïcitié* in the French *espace public*, and the necessity for law n°2004-228, 2010-1992 and the *UNEF amendment*. With these insights in mind, this piece has also provided a word of caution: decertification cannot be implemented without knowledge of a jurisdiction's pre-existing cultural oppressions and social imbalances and should not remove the state's engagement with inequality. Nonetheless, none of the evidence presented here negates the emancipatory potential of the FLaG's proposal for those who identified as "women" in Britain, France, or elsewhere.

Importantly, this type of conclusion was reached through an intersectional lens: it is only by acknowledging the inter-relatedness of identity-markers and histories of oppression in France that we can critically evaluate some of the disestablishment's implications. The

French government's insistence on being almost "antisectional" and the ways in which this has been harmful to groups such as Muslim women further illustrate the necessity of intersectionality in our feminist activism.

References

Amiraux, V., & Koussens, D. (2013) 'From law to narratives: Unveiling contemporary French secularism'. *Recode.* Available at https://www.recode.info/wp-content/uploads/2013/02/Fin_RECODE-19-Val%c3%a9rie-Amiraux-David-Koussens-Final_fin.pdf

Anthias, F. (2012). 'Intersectional what? Social divisions, intersectionality and levels of analysis', *Ethnicities*, 13(1), pp. 3-19.

Assemblée Nationale, Sénat. (1978) *Loi n°78-17 relative à l'informatique, aux fichiers et aux libertés.* 6 January. Available at https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000886460/

Assemblée Nationale, Sénat. (2004) *Loi n°2004-228 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics.* 15 March. Available at https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000417977/

Assemblée Nationale, Sénat. (2010) *Loi n°2010-1192 interdisant la dissimulation du visage dans l'espace public.* 11 October. Available at legifrance.gouv.fr/loda/id/JORFTEXT000022911670/#:~:text=Nul%20ne%20peut%2C%20dans%20l,destinée%20à%20dissimuler%20son%20visage.&text=I.,II

Aune, K., Lövheim, M., Giorgi, A., Toldy, T., & Utriainen, T. (2017) 'Is secularism bad for women?', *Social Compass*, 64(4), pp. 449-480.

Bentouhami, H. (2018) 'Les féminismes, le voile et la laïcité à la française', *Socio: La Nouvelle Revue Des Sciences Sociales*, 11(11), pp. 117-140.

Bonassin, F. (2021). Le Sénat adopte un "amendement Unef" contre les réunions non-mixtes. *La Dépêche.* 2 April. Available at https://www.ladepeche.fr/2021/04/02/le-senat-adopte-un-amendement-unef-contre-les-reunions-non-mixtes-9465387.php

Bourdieu, P. (1989) 'Social space and symbolic power', *Sociological Theory*, 7, pp. 14-25.

Brayson, K. (2019) 'Of bodies and burkinis: Institutional Islamophobia, Islamic dress, and the colonial condition', *Journal of Law and Society*, 46(1), p. 55-82.

Chambraud, C. (2021). 'Les sénateurs adoptent un 'amendement UNEF' permettant de dissoudre les assodications faisant des réunions non mixtes racisées'. *Le Monde*. 2 April. Available at https://www.lemonde.fr/societe/article/2021/04/02/les-senateurs-adoptent-un-amendement-unef-permettant-de-dissoudre-les-associations-faisant-des-reunions-non-mixtes-racisees_6075311_3224.html

Code Pénal. (2016). *Partie législatives (articles 111-1 à 227-33): Article 225-1*. Available at https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000033461473/#:~:text=Constitue%20une%20discrimination%20toute%20distinction,connue%20de%20son%20auteur%2C%20de

Conaré, M.-P., Yakoubat A., S., Lazli, C. B., Lenouvel, C., Banus, A., & Osbert, M. (2019) 'Le vivre ensemble en France : notion inclusive ou exclusive pour les femmes musulmanes ?', *Revue Des Droits de L'homme,* 15, p. 1-22.

Conseil Constitutionnel. (2010). *Décision n° 2010-613 du 7 octobre 2010.* Available at https://www.conseil-constitutionnel.fr/en/decision/2010/2010613DC.htm

Costa-Lascoux, J. (1997) 'La laïcité à l'épreuve de l'Union européenne', *Raison Présente,* 124(1), 43–64.

Cooper, D., & Emerton, R. (2020) 'Pulling the thread of decertification: What challenges are raised by the proposal to reform regal gender status?', *feminists@law*, 10(2), pp. 1-36.

Cooper, D., Grabham, E., Peel, E., Emerton, R., Newman, H., & Smith, J. (2022) 'Abolishing legal sex status: The challenge and consequences of gender-related law reform'. Available at https://www.kcl.ac.uk/law/research/future-of-legal-gender-abolishing-legal-sex-status-full-report.pdf

Crenshaw, K. (1989) 'Demarginalizing the intersection of race and sex: A Black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics', *University of Chicago Legal Forum,* 1(8), pp. 139-167.

Dasinières, L. (2021) 'La non-mixité choisie, racontée par celles qui la pratiquent'. *Slate.* 10 May. Available at http://www.slate.fr/story/208601/reunions-non-mixtes-mixite-choisie-racontee-espace-liberte-securite-minorites-feminisme-racisme-validisme-amendement-unef-separatismes

Dumais, J. (2000) 'Sondage, estimation et précision dans la rénovation du recensement de la population', *Population,* 55(4/5), pp. 813-819.

Fanon, F. (1959) *L'Algérie se dévoile.* Paris: Éditions François Maspero.

Fredette, J. (2015) 'Examining the French hijab and burqa bans through reflexive cultural judgement', *New Political Science,* 37(1), pp. 48-70.

Galonnier, J. (2019) 'Discrimination religieuse ou discrimination raciale ?', *Hommes & Migrations,* 1(1324), pp. 29-37.

Galonnier, J., & Simon, P. (2020) 'Le Comité pour l'élimination de la discrimination raciale : une approche pragmatique des statistiques ethniques (1970-2018)', *Critique Internationale,* 86(1), pp. 67-90.

Geny, V. (2021) 'Dissoudre les associations pour réunions en non-mixité : l'amendement Unef mort-né ?'. *Marianne.* 2 April. Available at https://www.marianne.net/politique/droite/dissoudre-les-associations-pour-reunions-en-non-mixite-lamendement-unef-mort-ne

Guyan, K. (2021) 'Constructing a queer population? Asking about sexual orientation in Scotland's 2022 census', *Journal of Gender Studies,* pp. 1-11.

Heyes, C. J. (2006) 'Changing race, changing sex: The ethics of self-transformation', *Journal of Social Philosophy,* pp. 37(2), pp. 266-282.

INSEE. (2017) 'Pour comprendre le recensement de la population'. *Institut national de la statistique et des études économiques.* Available at https://www.insee.fr/fr/information/2579979

Le Minez, S. (2020) 'Oui, la statistique publique produit des statistiques ethniques: Panorama d'une pratique ancienne, encadrée et évolutive'. *Le blog de l'Insee.* Available at https://blog.insee.fr/statistique-publique-produit-des-statistiques-ethniques/

Oltermann, P., & Henley, J. (2020). 'France and Germany urged to rethink reluctance to gather ethnicity data', *The Guardian.* 16 June. Retrieved from: https://www.theguardian.com/world/2020/jun/16/france-and-germany-urged-to-rethink-reluctance-to-gather-ethnicity-data

Macron, E. (2020). *Fight against separatism: the Republic in action.* [Speech transcript]. Les Mureaux, Yvelines (France). 2 October. Available at https://www.diplomatie.gouv.fr/en/coming-to-france/france-facts/secularism-and-religious-freedom-in-france-63815/article/fight-against-separatism-the-republic-in-action-speech-by-emmanuel-macron

Mballo, R., & Bourget, C. (2018) 'Comment peut-on être française et musulmane ? Lallab face à l'identité nationale', *French Cultural Studies,* 29(3), pp. 254-264.

Luce M. (2021). 'Réunions en non-mixité: "Une polémique infâme et calomnieuse'. *Mediapart.* Available at https://www.youtube.com/watch?v=etQFmZaDHTA

Lasserre J. (2021). 'Crop top à l'école : la prise de position d'Emmanuel Macron fait polémique'. *La Dépêche.* 2 Available at https://www.ladepeche.fr/2021/07/02/crop-top-a-lecole-la-prise-de-position-demmanuel-macron-fait-polemique-9647314.php

Lallab (2016) 'Challenging Muslim women's narratives'. Available at http://www.lallab.fr/

Ministère de l'Intérieur (2015). *La laïcité.* Available at https://www.interieur.gouv.fr/Publications/Cultes-et-laicite/La-laicite

(N.a). (2016). Cannes bans burkinis over suspected link to radical Islamism. *BBC News*. 12 August. Available at https://www.bbc.com/news/world-europe-37056742

(N.a). (2016). 'L'arrêté anti-burkini de Nice suspendu'. *Libération*. 1 September. Available at https://www.liberation.fr/france/2016/09/01/l-arrete-anti-burkini-de-nice-suspendu_1476159/

(N.a). (2021). 'Réunions non-mixtes: à gauche, ça dit quoi ?'. *France Inter.* 29 March. Available at https://www.radiofrance.fr/franceinter/reunion-non-mixtes-de-l-unef-a-gauche-qui-dit-quoi-8181372

(N.a). (2022) *Aims of the Project.* Future of Legal Gender. Available at https://futureoflegalgender.kcl.ac.uk/aims-of-the-project/

Najmabadi, A. (2006) 'Gender and secularism of modernity: How can a Muslim woman be French?', *Feminist Studies*, 32(2), pp. 239-253.

Poulat, E. (2005) 'Faut-il changer la loi de 1905 ?', *Esprit*, 315(6), pp. 92–99.

Renault, C. (2021). 'L'ONU exhorte la France à recourir aux statistiques ethniques pour lutter contre le "racisme systémique."'. *Le Figaro.* 1 July. Available at https://www.lefigaro.fr/actualite-france/l-onu-exhorte-la-france-a-recourir-aux-statistiques-ethniques-pour-lutter-contre-le-racisme-systemique-20210701

Sereni, J. (2016) 'Le dévoilement des femmes musulmanes en Algérie'. *Orient XXI.* 13 September. Available at https://orientxxi.info/lu-vu-entendu/le-devoilement-des-femmes-musulmanes-en-algerie

Safi, M. (2018) 'L'usage des catégories ethniques en débat.' *La vie des idées.* 26 July. Available at https://laviedesidees.fr/L-usage-des-categories-ethniques

Sägesser, C. (2005) 'La loi anti-discrimination', *Courrier hebdomadaire du CRISP*, 22(1887/8).

Silverman, M. (2007) 'The French Republic unveiled', *Ethnic and Racial Studies*, 30(4), pp. 628–642.

Spivak, G. C. (2003) 'Can the Subaltern speak?', *Die Philosophin,* 14(27), pp. 42-58.

Talpin, J. (2018) 'La non-mixité : une étape sur le chemin de l'émancipation des femmes', *Les Cahiers du développement social urbain,* 68(2), pp. 30-31.

About the Author Sophie Wilkinson is a 3rd Year Political Science student, focusing on gendered policy-making and politics. Having written her Bachelor's thesis on paternity leave reform in Spain, she is set to graduate from Leiden University in May 2022. She will begin an MSc Gender, Policy and Inequalities at the London School of Economics next autumn."

Author Contact Details

sophie.wilkinson.fr@gmail.com,