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## The Experience of Face Veil Wearers in Europe and the Law edited by Eva Brems

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# Book Review of *The Experience of Face Veil Wearers in Europe and the Law* edited by Eva Brems

Diana Li† and Jacqueline Van De Velde‡

*The Experience of Face Veil Wearers in Europe and the Law*, edited by Eva Brems, positions itself in the midst of a political, cultural, and intimately personal debate enveloping Europe over what is colloquially known as the “burqa ban.” Since 2010, Belgium, France, and select regions of the Netherlands, Italy, and Spain have adopted laws prohibiting citizens from covering their faces with “disguises,” “masks,” and “costumes.” Ostensibly, such bans are to protect the rights of all citizens and improve national security; in practice, they function to prevent practicing Muslim women from wearing garments such as the *niqab*. Brems takes care to note that these “bans are . . . almost entirely based on outsider experiences and views. The same holds to a large extent for the academic debates on the matter and even for NGO positions.”<sup>1</sup> It is within this space that the work operates. Brems states that her purpose is “to fill a gap in the current literature discussing face veil bans: the gap of the insider perspective.”<sup>2</sup> Brems is successful in her goal; the work gives voices to the individuals directly affected by the face veil bans, marrying their narrative with academic criticism of the bans.

Brems’s work is divided into two parts. Part I presents and interprets qualitative data from former and current face veil wearers in Belgium, Denmark, France, the Netherlands, and the United Kingdom. Part II compiles and presents the scholarship of academics who are interested in the face veil debate—all of whom reject face veil bans, but on a variety of grounds, ranging from feminist analyses to application of international law. The work comes at a critical moment, as right-wing parties gain increasing representation in European government, and in the wake of politicized tragedies such as the recent attacks in Paris and Brussels that have reigned

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1. Eva Brems, *Introduction to the Volume*, in *THE EXPERIENCE OF FACE VEIL WEARERS IN EUROPE AND THE LAW* 1, 3 (Eva Brems ed., 2014).

2. *Id.*

debates over immigration, restrictions on religious freedom, and national identity across Europe.

Through inclusion of insider narratives in Part I, Brems challenges many of the assumptions about *niqabis* that policymakers have advanced for the face veil bans, but that lack empirical support. For example, the Commission to Study the Wearing of the Full Veil, charged with advising the French Parliament, interviewed two hundred “experts” and only one *niqabi*.<sup>3</sup> Filling this gap in the empirical data and asymmetry in the public discourse serves two purposes: for scholars, to “improve the accuracy and pertinence of their arguments,” and for policymakers, to illustrate that “[p]olicy making on the basis of unchecked assumptions and in disregard of reality may—and in the ‘burqa ban’ experience does—result in policies that are ineffective, counterproductive and at odds with the fundamental rights and values they claim to advance.”<sup>4</sup> Although Brems hypothesizes that the availability of research on *niqabi* perspectives would not have changed the outcome of the ban in Belgium because of the speed and consensus around its passage, the Danish case illustrates the effect empirical research can have on policy. There, “because there were so few of them and half of them were ethnic Danish converts . . . [t]he idea of a general ban on face-covering clothes seems no longer to be a part of current politics in Denmark.”<sup>5</sup> As pressure to ban face veils spreads to other countries, *The Experience of Face Veil Wearers in Europe and the Law* provides much-needed reliable information.

One of the strengths of Brems’s presentation of the empirical data is that it brings together research from five countries (Denmark, Belgium, France, England, and the Netherlands) in a way that highlights similarities and trends but simultaneously offers an analysis that is context-specific and unique to each country. As a whole, the chapters portray a consistent image of *niqabis* as mostly native Europeans or long-time residents, many of whom are converts and who “wear the face veil as a matter of free choice in their personal religious journey.”<sup>6</sup> This image stands in stark contrast to policymakers’ assumptions that face veils are worn primarily by recent immigrants as an indication of withdrawal from society. Individually, the empirical country studies are not repetitive; each adds something new to the conversation by weaving personal narratives with the particular history and political landscape of the ban in the country. For example, Naima Bouteldja’s piece, *France vs. England*, contrasts the French experience with the more tolerant environment in England while Brems et al.’s *The Belgian ‘Burqa Ban’ Confronted With Insider Realities* makes a more normative argument against the ban and offers as a solution, “real human contact, in

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3. Naima Bouteldja, *France vs. England*, in *THE EXPERIENCE OF FACE VEIL WEARERS IN EUROPE AND THE LAW*, *supra* note 1, at 115, 115.

4. Brems, *supra* note 1, at 15.

5. Kate Østergaard et al., *Niqabis in Denmark: When Politicians Ask for a Qualitative and Quantitative Profile of a Very Small and Elusive Subculture*, in *THE EXPERIENCE OF FACE VEIL WEARERS IN EUROPE AND THE LAW*, *supra* note 1, at 42, 72.

6. Brems, *supra* note 1, at 13.

which people get to know each other's concerns, and generate tolerance through mutual understanding—values that cannot be voted into existence as a ban can."<sup>7</sup>

Qualitative research like this, particularly of smaller subcultures, naturally poses many challenges. For example, it is difficult "to draw a representative sample, as the total population of face-veiling women is unknown,"<sup>8</sup> and many face veil wearers belong to different communities, are not organized, and are skeptical of researchers, particularly those sponsored by the government.<sup>9</sup> To deal with these difficulties, the studies employed a combination of snowballing, key informants, location sampling, random stops, focus groups, and networks through Islamic organizations and mosques to arrange interviews. Even so, the resulting sample sizes were of varying strength. For example, while *France vs. England* compared 122 interviews in England with 32 in France, Annelies Moors's *Face veiling in the Netherlands* included only about 20 interviews and Kate Ostergaard et al.'s *Niqabis in Denmark* only 8. In these latter studies, the small sample sizes ought to caution against over-generalization of their conclusions. Additionally, sociological research of this kind warrants a more explicit confrontation of the positionality and biases of the researchers that frame the interviews and color the conclusions. For example, the Introduction mentions that Eva Brems is from Belgium, but is silent about the background and ethnicity of the other authors, their relationship to the niqabi community, and their other subjective biases.<sup>10</sup>

Similarly, the studies' funding sources inevitably drive the purposes of the research. The Danish and Dutch studies were funded by the government for the purpose of guiding decision-making, whereas the French and UK studies are funded by the Open Society Foundation, an organization whose mission includes strengthening "respect for human rights, minorities, and diversity of opinions."<sup>11</sup> In a foundational sociological work, Max Weber argues that objectivity in scientific endeavors is impossible and awareness of subjective bias therefore essential.<sup>12</sup> Similarly, Gayatri Chakravorty Spivak emphasizes the importance of caution when a researcher speaks on behalf of marginalized populations of which he or she is not a member.<sup>13</sup> Because this book combines research done by "different research teams at different times in different contexts"<sup>14</sup>

7. Eva Brems et al., *The Belgian 'Burqa Ban' Confronted With Insider Realities*, in *THE EXPERIENCE OF FACE VEIL WEARERS IN EUROPE AND THE LAW*, *supra* note 1, at 77, 114.

8. Annelies Moors, *Face Veiling in the Netherlands: Public Debates and Women's Narratives*, in *THE EXPERIENCE OF FACE VEIL WEARERS IN EUROPE AND THE LAW*, *supra* note 1, at 19, 26.

9. Østergaard et al., *supra* note 5, at 47.

10. Brems, *supra* note 1, at 1.

11. Open Society Foundation—London, CORDAID, <https://www.cordaid.org/en/partners/open-society-foundation-london> (last visited March 23, 2015).

12. Max Weber, "Objectivity" in *Social Science and Social Policy*, in *METHODOLOGY OF SOCIAL SCIENCES: MAX WEBER* 49 (Edward Shils & Henry A. Finch eds., 2011).

13. Gayatri Chakravorty Spivak, *Can the Subaltern Speak?*, in *THE POST-COLONIAL STUDIES READER* 28 (Bill Ashcroft et al. eds., 2d ed. 2006).

14. Brems, *supra* note 1, at 12.

on a topic central to *niqabi* women's identities, it is even more important to engage in this critical analysis of reflexivity and methodology.

By contrast, Part II of the Brems's work opens the narrative space to scholars and academics engaging in the debate over the face veil. The perspectives offered are diverse, varying from an analysis of the status of face veil bans under international law, to feminist analyses, to exploration of the face veil as a symbol. The articles collected in this Part seem to better serve an audience of sociologists or feminist scholars, perhaps, than they do legal scholars. Furthermore, it is worth critiquing the position that Brems chooses to give the scholars, compared to the voices in Part I of the text. By positioning their critiques after those of the individuals affected by the face veil bans, Brems allows their arguments to in some ways supersede and subsume those of the women in Part I. The voices of scholars both preface and conclude the work, bookending and re-interpreting the insights that Muslim women make of their own circumstances. This, it seems, deserves some criticism.

The chapters themselves lend interesting insights and critical perspectives to the debate. Of particular note to legal scholars and academics is Chapter 6, entitled *Insider Perspectives and the Human Rights Debate on Face Veil Bans*, by Emmanuelle Bribosia and Isabelle Rorive. This article offers a deft analysis of the legal principles entangled in enacting a face veil ban. Bribosia and Rorive note that, "freedom of expression protects . . . non-verbal expression such as clothes or symbols."<sup>15</sup> Such clothes or symbols include the face veil. To violate freedom of expression, a state must articulate a legitimate aim under the Articles of the European Convention on Human Rights. However, the authors note that of the many aims put forward during the Belgian and French parliamentary debates, few pass legal muster; only "public security and public order, protection of human dignity and gender equality" are legitimate aims listed in Articles 9 and 10 of the European Convention of Human Rights.<sup>16</sup> However, the authors note that even those justifications are dubious at best. Forbidding the full face veil cannot be justified under national and European human rights standards, given that it does not pass the test of "an actual threat to public [security] or the sufficiently strong likelihood of one."<sup>17</sup> The European Court of Human Rights has previously held that speculative danger, such as a protective matter to preserve democracy or national identity, does not constitute a pressing social need.<sup>18</sup> Nor does the face veil ban serve as a mechanism "necessary and proportionate" to achieve gender equality.<sup>19</sup> The European Court of Human Rights has clearly protected the "freedom of self-determination, as a consubstantial aspect of the human

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15. Emmanuelle Bribosia & Isabelle Rorive, *Insider Perspectives and the Human Rights Debate on Face Veil Bans*, in THE EXPERIENCE OF FACE VEIL WEARERS IN EUROPE AND THE LAW, *supra* note 1, at 163, 169.

16. *Id.* at 171.

17. *Id.* at 172.

18. *Id.*

19. *Id.* at 174.

person,” deriving the right to personal autonomy from the right to respect for private life.<sup>20</sup>

Furthermore, Bribosia and Rorive offer a compelling argument for why face veil bans, while neutral on their faces, constitute gender discrimination. The bans, they argue, have “potential multiple or intersectional disparate impact on Muslim women”—an impact documented in empirical studies in Belgium and France.<sup>21</sup> European jurisprudence requires “very weighty reasons” to justify differences in treatment based on gender under the strict scrutiny test.<sup>22</sup> Implicit in their analysis, and in their argument that the aims of European countries could be reached through less intrusive means than a face veil ban, is the authors’ suggestion that these laws, if appealed to the European Court of Human Rights, would not pass muster under international law.

Some of the arguments presented in other chapters of the book are worth reading, if only for their novelty. For example, Chapter 10, *Women’s Oppression and Face-Veil Bans: A Feminist Assessment*, by Dolores Morondo Taramundi, offers a novel critique of several feminist arguments against face veil bans,<sup>23</sup> while Chapter 11, *The Return of a Persecuting Society? Criminalizing Facial Veils in Europe*, by Maleiha Malik, provides insightful connections of the present bans to the tenth and thirteenth century persecutions of lepers, Jews, and heretics.<sup>24</sup>

*The Experience of Face Veil Wearers in Europe and the Law* offers a contribution that is noteworthy for its cultural relevance, its ability to make space for marginalized voices, and its inclusion of interdisciplinary perspectives on face veil bans. While the organization of the text is problematic, the editor achieves her stated intention, and the work serves as a valuable resource to individuals seeking qualitative data or a starting place from which to explore the diverse issues implicated in these bans.

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20. *Id.* at 178 (quoting French Council of State, *Study for Banning the Full Veil*, 23).

21. *Id.* at 179.

22. *Id.* at 180.

23. Dolores Morondo Taramundi, *Women’s Oppression and Face-Veil Bans: A Feminist Assessment*, in *THE EXPERIENCE OF FACE VEIL WEARERS IN EUROPE AND THE LAW*, *supra* note 1, at 218.

24. Maleiha Malik, *The Return of a Persecuting Society? Criminalizing Facial Veils in Europe*, in *THE EXPERIENCE OF FACE VEIL WEARERS IN EUROPE AND THE LAW*, *supra* note 1, at 232.

