

LAW, CULTURAL STUDIES AND
THE “BURQA BAN” TREND

An Interdisciplinary Handbook

Edited by
Anja MATWIJKIW
Anna ORIOLO



INTERSENTIA

Cambridge – Antwerp – Chicago

Intersentia Ltd
8 Wellington Mews
Wellington Street | Cambridge
CB1 1HW | United Kingdom
Tel: +44 1223 736 170
Email: mail@intersentia.co.uk
www.intersentia.com | www.intersentia.co.uk

*Distribution for the UK and
Rest of the World (incl. Eastern Europe)*
NBN International
1 Deltic Avenue, Rooksley
Milton Keynes MK13 8LD
United Kingdom
Tel: +44 1752 202 301 | Fax: +44 1752 202 331
Email: orders@nbninternational.com

Distribution for Europe
Lefebvre Sarrut Belgium NV
Hoogstraat 139/6
1000 Brussels
Belgium
Tel: +32 (0)800 39 067
Email: mail@intersentia.be

Distribution for the USA and Canada
Independent Publishers Group
Order Department
814 North Franklin Street
Chicago, IL 60610
USA
Tel: +1 800 888 4741 (toll free) | Fax: +1 312 337 5985
Email: orders@ipgbook.com

Law, Cultural Studies and the “*Burqa* Ban” Trend. An Interdisciplinary Handbook
© The editors and contributors severally 2021

The editors and contributors have asserted the right under the Copyright, Designs and Patents Act 1988, to be identified as authors of this work.

No part of this book may be reproduced, stored in a retrieval system, or transmitted, in any form, or by any means, without prior written permission from Intersentia, or as expressly permitted by law or under the terms agreed with the appropriate reprographic rights organisation. Enquiries concerning reproduction which may not be covered by the above should be addressed to Intersentia at the address above.

Artwork on cover: © “Experimental Photo Study of Model” (mid-1970s) by Edward Matwijkiw (1937–2012), reproduced with kind permission of Judith Matwijkiw.

ISBN 978-1-83970-058-3
D/2021/7849/34
NUR 820

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

CONTENTS

<i>Acknowledgements</i>	vii
<i>List of Cases</i>	xix
<i>List of Abbreviations</i>	xxvii
<i>List of Contributors</i>	xxxii

An Introduction to the Interdisciplinary Considerations of the “Burqa Ban” Trend: Criminalizing the Trivial or Separating National and International Law?

Anja MATWIJKIW and Anna ORIOLO	1
1. The Trend and the Predicament	1
2. The Project and an Overview of the Chapters	8
3. Contradictory International Judgments and Country-Specific Studies	24

PART I. INTERDISCIPLINARY PERSPECTIVES ON THE STRATEGY OF PROHIBITION

The “Burqa Bans” and Superficial Politics

Robin May SCHOTT	35
1. Introduction	36
2. Background and Context	37
3. The <i>Burqa</i> Bans in Europe	39
4. Feminist Contestations	43
5. The Danish Case	47
6. Wrapping Up	52

Philosophical Analysis as a Pathway to Progress: From the *Burqa* to the *Emperor’s New Clothes*

Bronik MATWIJKIW	55
1. Introduction: The Superficial and the Foundational	56
2. The <i>Burqa</i> Ban and the Danish MPs <i>cum</i> Legislators’ Assumptions: A General Commentary	58
3. How Philosophical Analysis can be a Pathway to Progress: A Comparison Between Materialism and Idealism	68
4. Conclusion	74

A Taxonomy and Criticism of Rationales for Banning Face Veils	
Ryan LONG	81
1. Introduction	82
2. Autonomy Rationales	82
3. Physical Rationales	83
4. Symbolic Rationales	88
5. Psychological Explanations	89
6. Conclusion	92
Toward “Living Together” as (A)religious Convergence: Against the <i>Burqa</i> Ban	
Erik Daniel BALDWIN	93
1. Introduction	94
2. The Argument in Favor of the <i>Burqa</i> Ban	95
3. The Crowded Theater and Contested Blood Transfusion Cases	97
4. Lessons to be Learned	100
5. Response: Liberal Democracy at Stake	101
6. Themes, Connections, and Continuations	103
7. The Crisis of the Integration Model	105
8. The General Will and Common Identity	106
9. On the Untenability of Modern Liberalism	108
10. Moving Forward	112
PART II. LEGAL PERSPECTIVES	
<i>Religious Clothing, Law, and a Veil-Wearer’s Experiential Account</i>	
The Law and Religious Dress	
Rt. Hon. Lady HALE DBE	117
1. Introduction	117
2. What is the Law on Religious Dress?	119
3. Drawing the Threads Together	126
4. Back to Where I Started	128
Wearing Religious Clothing at the Workplace in EU Law and the Risks of a “Neutrality Policy” in Private Employment	
Teresa RUSSO	131
1. Introductory Remarks	132

2. Non-Discrimination, Religious Freedom, and the Issue of Wearing Religious Clothing at the Workplace in the EU	135
3. The 2000 Employment Equality Directive: Direct v. Indirect Discrimination in the <i>G4S Secure Solutions</i> Case.	139
4. Discrimination v. “Genuine or Objective Occupational Requirements” in the <i>Bougnaoui</i> Case.	142
5. Conclusions: Looking for an Equitable Balance Between Freedom of Religion and Freedom to Conduct a Business	144

I Am the “Veil Woman”: A Muslim Narrative

Sarah ALI	147
---------------------	-----

1. Introduction	147
2. Wearing the <i>Niqāb</i> Against the Flow	148
3. Anti-Muslim Sentiments in Europe.	150
4. An Experience of Exclusion and Discrimination	151
5. The Danish Ban	153
6. A Colonist and Orientalist Obsession with the Veil	156
7. Final Thoughts	159

Human Rights Perspectives

***Burqas and Niqābs* as Protected Expression: “This is My Face”**

Kerstin Bree CARLSON and Jacob Livingston SLOSSER	167
---	-----

1. Introduction	168
2. Banning Islamic Face Coverings in Europe	169
3. “This is My Face”: Islamic Dress as Protected Forms of Expression Under Article 10	175
4. Discriminatory Intent: The Face-Covering Ban as Part and Parcel of Legalized Discriminatory Practices in Denmark	181
5. Conclusion	186

Social Conditions of Freedom, International Human Rights Law, and Women’s Dress: Identity, Belonging, and Recognition

Jill MARSHALL	187
-------------------------	-----

1. Introduction	188
2. Regulating Women’s Dress and Identity	189
3. The Global Picture	192

4. An Inclusive, Just Environment	199
5. Conclusion	204

**Dressing Neutrally v. Religious Freedom in European “Headscarf Cases”:
Looking for a Rationale to Legitimize the Ban on Concealing Faces in
International (Human Rights) Jurisprudence**

Anna ORIOLO	205
1. Introduction	206
2. The State Margin of Appreciation in ECtHR Jurisprudence Concerning Blanket Bans on Face Veils in Public	209
3. The CJEU Guidance on National Restrictions to Freedom of Religion in Employment and Occupation	219
4. UNHRC Monitoring of States’ Discriminatory and Disproportionate Prohibition of Wearing Veils	224
5. Concluding Remarks: The “Interpretative Autonomy” of International Courts on the Freedom to Wear the Islamic Veil	228

**Conflicting Human Rights Perspectives on the French *Burqa* Ban:
European Court of Human Rights v. UN Human Rights Committee**

Shino IBOLD and Stefan OETER.	231
1. Introduction	232
2. The Standpoint of the ECtHR: <i>S.A.S. v. France</i>	236
3. The Opposing View of the UNHRC: <i>Yaker and Hebbadj</i>	248
4. Context and Legal Policy: What are the (Practical) Implications of the Contradictory Decisions?	259

**The Use of Artificial Intelligence for Public Security Among Prejudices,
Secularism, and Respect for Fundamental Guarantees**

Gaspare DALIA	263
1. Introduction	264
2. A Threat to the Neutrality/Secularity of the State: The Indissoluble “Public Order and Safety” Binomial	267
3. The Problem of Association Between Islam and Terrorism	270
4. Toward Possible Alternative Solutions to Bans: The Role of Technology for Security Purposes	271
5. The New Algorithms During the Pandemic	274
6. Conclusions	279

*National Perspectives***The Italian Uncertain Approach to the *Burqa*: A Testing Ground for the Unifying Role of “*Laicità*”**

Giuseppe D'ANGELO	283
1. The <i>Burqa</i> and the Value of Legal Unity	284
2. The Italian Debate and the Duality of Religion	284
3. The Constitutional Framework: The Supreme Italian Principle of <i>Laicità</i> and its Problematic Implementation	286
4. From Principles to Rules: The <i>Burqa</i> and Criminal Law	291
5. The Local Attempts to Adopt a <i>Burqa</i> Ban Through a Creative Interpretation of State Law	293
6. The Judges' Interpretation: The Fixed Points of the State Council and the Possibility of New Prohibitions	294
7. Intensifying the Conflict: The Regional Council Through the State Council's Open Door	295
8. The Future: Some Other Worrying Signs	297
9. The Paradox of COVID-19	300

Inter-American Perspectives on the *Burqa* (Ban)

Willie MACK	301
1. Introduction	302
2. The <i>Burqa</i> : Different Stakeholder Perceptions	303
3. <i>Burqa</i> Bans and Inter-American Judicial Review	314
4. Conclusion	324

The Perspective of Post-Soviet States on the *Burqa* Ban: A Study of the Delegalization of Religious Headwear in Post-Soviet States

Kamal MAKILI-ALIYEV	329
1. Introduction	330
2. Azerbaijan	331
3. Kazakhstan	333
4. Latvia	335
5. Russia	336
6. Tajikistan	338
7. Uzbekistan	340
8. Recognizing and Analyzing the Trend	343
9. Conclusions	346

Denmark’s Blanket <i>Burqa</i> Ban: A National(ist) Perspective	
Anja MATWIJKIW and Bronik MATWIJKIW	349
1. Introduction: The Danish Criminalization Strategy	350
2. Law L 219: Fines for the Unfree	356
3. What’s Wrong with <i>Them</i> ? More About the Problem as Seen by <i>Us</i>	369
4. Concluding Remarks and Reflections: Danish Bluff and <i>Realpolitik</i>	381
 PART III. RESPONSES TO OTHERNESS: GENDER, RACE, AND THE VEIL FACTOR	
Wearing the <i>Hijāb</i>: Cultural Awareness, Cross-Cultural Competence, and Interactions in an Unfamiliar Cultural Context	
Bice DELLA PIANA and Fatiha CHAKIR	393
1. Introduction	394
2. Cultural Awareness, Cross-Cultural Competence, and Cultural Humility	395
3. The Positive Approach to Studying Cultural Diversity	399
4. The Explorative Study: Wearing the <i>Hijāb</i> in Daily Interactions with Local Communities in Salerno (Italy)	400
5. Conclusions and Future Lines of Research	405
 Integration, Culture, and Gender in Swedish City Council Motions: Veils and Other Obstructions to “Swedishness”	
Nina JAKKU	411
1. Introduction	412
2. Methods and Materials	414
3. The Clash of Civilizations	417
4. The Matter of Modernity	419
5. Save the Muslim Women: Internal and External Practices Concerning Gender Equality	423
6. Assumed and Forced Connections: Veils and Honor	427
7. “Swedish Values”: Integration, Assimilation, and the Cases of Staffanstorp, Skurup, and Sölvesborg	429
8. Secularity	432
9. Conclusion	434

**The Racial/Spatial Politics of Banning the Muslim Woman’s *Niqāb*:
A Site/Sight We Cannot Bear**

Sherene H. RAZACK 439

1. Introduction 440

2. Phantasmatic Scenes in Legal Cases 444

3. A Racial/Spatial Analytic 453

4. Conclusion: A Rock-Bottom Minimum 459

Epilogue

Anja MATWIJKIW and Anna ORIOLO..... 463

Index..... 465