

The rules we live by

In 2016, Bulgaria banned the covering of mouth, ears and forehead. Pre-pandemic, the only persons regularly covering these parts of the face were a small minority of Muslim women. The campaigns that surrounded the lobbying for the ban were led by a right-wing party, who afterwards gained electoral support. The present paper emerged from my reflections on 35 discussions held with Muslims in Bulgaria in 2018. I observed that the conversations revealed four broad, contrasting perspectives on the ban. These four perspectives are connected in a marginalization dynamic, which was actually generated by the face veil ban being brought into law: evidence from my 35 discussions indicates that the systemic pattern of marginalization didn't exist in this form prior to the legal intervention by the State.

A ban on identity expression (the face-veil being a symbol of pious Muslim identity) is, of course, a legal act. Therefore, a reflection on the relationship between marginalization and legislation is needed. This paper aims to move the debate on the nature of identity beyond the micro-level of social groups by examining the place of the individual in a social system where the State has the legitimacy to reinforce some moral interpretations and simultaneously undermine others via use of the law.

The study of law is commonly called 'jurisprudence'. The most prominent systemic jurisprudential theory is based on a cybernetic understanding of self-referential social systems (or self-referential institutions) (Luhmann, 1986, 1988a, 1988b): Luhmann has applied his theory to the institution of law, amongst many others. Self-referential institutions are numerous: political, economic, religious, scientific, educational and legal (Luhmann, 1986). They are all sub-systems of the wider social system, and are formed of communications, and *only* communications (the agents who are communicating are viewed as being in the environment of the system). Every institutional sub-system of society is self-producing (autopoietic) because, in reproducing itself through operational cycles, it creates new judgemental communications, referring both to its fundamental code, which constitutes a binary opposition (such as legal-illegal), and past precedent (Luhmann, 1986, 1988, 2004). If the code is integral to the system, and so are the communications that make up the statements of past precedent, then there is nothing from outside the system that is

employed in the creation of the new communications that are to become the new parts of that system. Hence, in Luhmann's (1986) view, contemporary societal institutions (including the legal system) are fully autopoietic.

Luhmann's theory remains enigmatic to many, perhaps because it presents what they see as an abstract account of autopoietic social systems – although, in my view, Luhmann's (1986) book, *Ecological Communication*, illustrates the theory with many useful examples. While I appreciate the importance of Luhmann's ideas to understanding the general functioning of institutional systems, I argue that his theory is problematic in one important respect: putting human communicators in the environment of the system seems to be a counter-intuitive move that disconnects institutional systems from the human agents that produce the communications that constitute those systems (Dupuy, 1988; Rottleuthner, 1988; Mingers, 2002, 2004). Although Luhmann (1988a, 1988b) elaborates his choice of placing human beings outside the system, and he explains that institutions could not be autopoietic if people are viewed as parts of institutions, because they bring in knowledge from outside those institutions, I have two counter-arguments. First, maintaining the idea of social autopoiesis doesn't seem to me to be a good enough reason for creating a seemingly-arbitrary and impermeable boundary between biological human beings and their communications: if preserving a theory is a sufficient reason to exclude 'inconvenient' variables, then mounting a persuasive case for the falsification of a theory becomes very difficult indeed (Popper, 1959). My second reason for refusing the exclusion of physical human beings is that the embodiment of people and their interactions has to be accounted for in any systemic theory of identity, given that we have anticipatory feelings (instances of affect) that are interpreted as emotions in relation to the social context and our past personal experiences (Feldman Barrett, 2006). Our identities are not just produced by disembodied communications: our physiological felt sense and how this is interpreted as emotion matters in our understanding of our own self-identity (e.g., when we experience marginalization).

In this paper, I aim to remedy the disconnect between institutional communications and the people who produce them by bringing in the human experience of legislation against the backdrop of identity. I will also argue that the discipline of anthropology has plenty to offer systemic enquiries into identity and its regulation. This regulation

is enacted by a State that tends to moralize social issues, especially those that are perceived as dangerous. I draw upon Douglas's (1991) theory of risk, as well as her ideas on institutional design and the interactions between individuals and the State (Douglas, 1966, 1970). The early ideas of Douglas (1966) have informed Midgley's (1992, 2000, 2015, 2022) systemic theory of marginalization, and I believe that her later works (Douglas, 1986, 1991) can *enhance* this marginalization theory by situating marginalization processes in an institutional and legal context.

The remainder of this paper is structured as follows. First, I will turn my attention to Luhmann's (1988) theory of self-referential social systems – and more particularly, his ideas on the legal system. I will present his main arguments in more detail than the sketch I have already offered, and will contest the separation between communicator and communication. Furthermore, I will present Douglas's views on institutional design, framing of risk and techniques for exclusion and control. Her valuable insights on culture (Douglas, 1970, 1986) will serve to extend the theory of marginalization (Midgley, 1992, 2000, 2015, 2022) beyond binaries and into spectra. Finally, I will offer some concluding comments, and will propose a new way of thinking about the marginalization of social groups in the presence of a legal intervention.

Rules and belonging

One can hardly begin to theorize any level of organization without two basic elements – rules and belonging. While the rules provide the basic principles with which the organization is defined, the element of belonging clarifies who and what is 'in' and 'out', and which people should be aware of (or wary of!) the rules. In the case of national legislation, all people who live within the borders of the State would be considered as potentially affected by legislation. At the same time, some specific laws cover the rules of behaviour of regulated professions, like lawyers, medical doctors, teachers, etc. In this case, legislation is specific, and it only targets the behaviour of a certain group. However, legislation that regulates social behaviour, like the anti-face-veiling act in Bulgaria, is framed as valid for all members of society, although it clearly only affects women who cover their face for religious reasons (people who have health conditions are not covered by the ban).

Almost every person in the world belongs to a State (with the exception of a few places where tribal people are isolated from wider society, and others where legitimacy is contested, e.g., war zones and disputed areas like the Gaza Strip). Since Bulgaria has no isolated tribes and is not disputed as a country, its claim to territorial legitimacy is uncontested. Thus, general legislation in Bulgaria (of a penal, administrative, etc., character) is widely accepted as valid for all its citizens. To gain insights into identity processes stemming from a State-led legal intervention, one must look at jurisprudential scholarship. In contrast, to understand the processes behind the design of rules (formal and informal), one should consult anthropology. As stated earlier, to fulfil these two tasks, I intend to present the work of Luhmann (1988, 2004) and Douglas (1970, 1986, 1992) to advance my systemic inquiry into identity.

Legal theory: Self-referential systems

Modern legal theory is concerned with the relations between rules and language, legal uncertainty, and the source of the authority of law. In Britain, HLA Hart's brand of legal positivism (Hart, 1961) remains the *fons et origo* of mainstream jurisprudence. In Hart's legal philosophy, the law derives its authority from sociological facts, but its internal operation, which includes all adjudication in society, is always a matter of formal logic. According to Hart, every rule has a core and a periphery – or a penumbra of uncertainty. The core contains clear rules and prohibitions, while the penumbra leaves space for the judiciary to analyse and make a value judgement. For instance, covering the mouth, ears and nose is prohibited in Bulgaria. Suppose a person walks in stormy weather with their scarf blown over their face. Then the covering of the face would be in the penumbra or the periphery of the rule, as they were not able to uncover due to the strong wind that caused their face to become veiled. Under Hartian positivism, once an act is in the penumbra, the judiciary enjoys a degree of discretion when applying legislation.

Hartian positivism is rivalled in prominence only by Dworkinian interpretivism. Dworkin's theory posits that all disputes have a unique, correct resolution and that there is always a rule available that can be interpreted (Dworkin, 1972 1986). The

judiciary do not enjoy any discretion, even when a dispute is penumbral. In fact, disputes are never truly penumbral. They only *appear* uncertain because of the judiciary's failure to identify the politico-moral core of the law. Additionally, there is always a rule out there that can come to aid the judge in their decision. For instance, plenty of civil legislation relies on clauses of force majeure – where unforeseen circumstances and natural disasters are factored into regulation, so people are absolved from financial liability when the situation is completely out of their control. Thus, upon closer review, the judiciary should always be able to identify a rule that can be applied, as all legal events happen within the 'core' of some sort of legislation: a penumbra or a periphery simply does not exist (Dworkin, 1986).

These theories are intended to explain all law, irrespective of content – a fascist regime and a platonic republic can both be analysed along positivist or interpretivist lines. This is not to deny the existence of normative theories of law, such as critical legal studies (Kennedy, 1997) and law-and-economics (Posner, 1973). However, their impact on legal practice has been limited, especially in Europe.

It was in this context that Luhmann introduced his systems theory of institutions, with a special focus on law, and his work unfolds along similar lines to both positivism and interpretivism: his concern is to provide a generic theory of legal structure, and he is not interested in the implications of law for identity or the consequences for human behaviour (both matter for the theorizing in this paper). To reflect on the systemics of law and identity, one needs to utilize a *systems theory of jurisprudence*. While Luhmann (1988, 2004) is arguably the most significant contributor in the field of systemic jurisprudence, as we shall see below, his theory does not engage with human factors in legislative processes, so a revision of these systemic ideas is needed in order to account for the role of the legal system in identity production.

Luhmann (2004) advances several claims regarding the superiority of a systems approach in approaching matters of legal scholarship. According to him, the central argument in systems thinking is the conceptualisation of 'system' and 'environment', while the inclusion of the observer is also among the fundamental concepts (in addition, see classic writings in second order cybernetics, such as von Foerster, 1979; von Glasersfeld, 1985; and Maturana, 1988). Luhmann speaks of the 'observing system', or how systems use self-produced observations, and he claims that no other theory but a systems theory could deal with the complexity of the legal realm. Inspired

by the ideas of Varela et al. (1974), Luhmann (1986) adapts the biological theory of autopoiesis and transplants it to the field of social science. An autopoietic system was first defined by Varela et al. (1974) as a living system that reproduces its own elements through the interaction between those elements and its environment. To put it in their exact words:

“[T]he autopoietic organization is defined as a unity by a network of productions of components which (i) participate recursively in the same network of productions of components which produced these components, and (ii) realize the network of productions as a unity in the space in which the components exist” (Varela et al., 1974, p. 187).

Thus, Luhmann’s theory of self-referential systems hinges upon *self-reproduction* or *social autopoiesis*. The legal, economic, political, scientific, religious and education systems are all autopoietic subsystems of society (Luhmann, 1986). In a nutshell, the elements of a biological system (organism) are cells, tissues and organs, and the organism’s environment is everything that spans beyond its external boundary (for example, the skin of the human body). Biological systems co-exist with their environment and constantly produce themselves in relation to this environment, thus performing autopoiesis. Literally translated, autopoiesis means ‘self-poetry’, although it is more commonly defined as ‘self-producing’ (Mingers, 1995).

In Luhmann’s (1986, 1988, 2004) *social autopoiesis*, the elements of a social system are communications, while human beings and other biological and physical elements, like nature and technological artefacts, are within the environment of the system. Moreover, social systems are self-referential, not just in their process of production, but they also refer to themselves communicatively as part of this process: i.e., in the case of the legal system, previous legal communications that have established precedence. Biologically, in order to manage complexity, organisms have to become closed to their niche, meaning that they need to be autonomous and also maintain a protective boundary, fencing the environment out. Rather than having direct relationships with their environments, organisms operate with a limited scope of responses and receive a limited amount of information from their environments (Maturana and Varela, 1987). Upon receiving that limited information, organisms

process it and then produce complex reactions that feed back into the environment (ibid).

Information, for Luhmann (1988a, 2004), is exclusively internally-chosen by a given system's selection horizon. The selection horizon is informed by a binary code that holds the system together. In the case of the institution of law, the binary code concerns whether something is legal or illegal. Only information that can be classified using the binary code is accounted for (i.e., incorporated into the system), which is why, in the institution of law, any information that is framed in a way that doesn't link back to a statement of legality is not 'heard'. Thus, a communication about whether a particular example of face-veiling is legal in Bulgaria will be accepted as part of the system, as will an expression of guilt or innocence (as this depends on definitions of what is legal or illegal), but a communication about whether face-veiling is appropriate to the Islamic faith will not be included in the system because it does not involve the consideration of legality.

While every system operates within an environment, Luhmann (1988a) states that social systems, as systems of communication, cannot *directly* access their environment: they have no option but to *interpret* communications in terms of the binary and past precedent, so they exist within a niche that is operationally inaccessible to them. An analogy can be drawn between this and biological human beings, as the latter cannot access communications 'as the speaker intended', but only as their interpretive framework (which is anticipatory of the future, but dependent on past experience) allows them to be understood (see Rosen, 1991, and Seth, 2021, for theories of organisms as anticipatory systems).

Every system has a single code, on whose axle programming turns. Codes are always rooted in oppositional binaries, like "legal-illegal" (Luhmann, 2004, p. 174). One side of the code is positive ("legal"), and the other is negative ("illegal"). Every code has only two sides. The reason for institutions to exist is to enable the efficient processing of decisions while allowing multiple possible responses rather than (single) causal responses. Thus, decision-making happens through the interpretation of these binary codes. In jurisprudence, codes correspond to rules. Finally, the autopoiesis of

institutions gives them a resilience against the communications of individuals when those communications do not resonate with the system.

More precisely, self-referential systems are “systems which themselves produce as unity everything which they use as unity” (Luhmann, 1988a, p.14). The system’s fundamental “code” defines right and wrong, or rather inclusion and exclusion. Thus, through its closure, the system reproduces itself in its own image, where this code is upheld. However, the code alone is insufficient: there is also a second dimension – the interpretation of the code in light of precedence. The social system and all of its sub-systems consist of nothing but communications. Social systems reproduce themselves only through self-referential communication (Luhmann, 1986). Hence, social systems reproduce themselves through their understanding of themselves by way of analysing and receiving communication. Logically, if reproduction flows from communications that refer to the past, present and anticipated future, the activity of reproduction must rely on the system’s self-observation or self-description.

Critiques of Luhmann

The very idea that autopoiesis may happen beyond biology, in the social realm of communications, is critiqued by several scholars. For example, Varela (1979) asserts that autopoiesis can only be observed at the level of individual biological organisms, and hence social systems cannot be autopoietic. A system can only exist within an environment, and the environment facilitates the process of autopoiesis.

Luhmann’s reply is that the institution of law is made up of communications, and it exists in the environment of *wider* communications, plus the physical beings doing the communicating. In the legal system, communication consists of information and comprehension (Luhmann, 1988b), so the elements (parts) of the system, communications, are different from the elements of a biological organism, but autopoiesis is still possible. Autopoiesis envisions reproduction where the unity maintains its identity (Maturana and Varela, 1987), and in this sense the institution of law can be subject to either radical or incremental change without the autopoietic character of law being infringed upon (Luhmann, 2004).

Rottleuthner (1988) and Mingers (2002) believe that, once communication and agent are separated, the complex relationship between people and the communicative system they use is concealed. This hides a lot of important activity in institutions. Dupuy (1988) likewise argues against the wisdom of separating the communicator from his or her communications. The entirety of society, with its human beings and emerging patterns of behaviour and communication, is what facilitates the autonomy of the social system (Dupuy, 1988), and the abstraction of communication into a separate domain makes little sense without its generating agents.

In addition to discussing the divorce of communications from the agents uttering them, Rottleuthner (1988) critiques Luhmann's (1988a) level of abstraction on the grounds that it is so different from the rest of legal research that there is no point of engagement between them. Luhmann's reply (1988b) is that both this abstraction and the focus on communications rather than agents is important to his theory, as biological beings can move between institutions. This means, if they are seen as parts of those institutions, it makes autopoiesis impossible, as there is no longer operational closure. From a scientific point of view, this stance is open to criticism as it is equivalent to treating the theory of autopoiesis as an ideology: any question that can be raised against it must be illegitimate simply because it threatens the theory (Midgley, 2020).

Midgley (2009) suggests that *institutions host organizations*. Every institutional system has a single binary code, and it also has many other communications that have been accepted in the past as part of the institution because they have resonated with the binary (in this respect, Midgley, 2009, follows Luhmann, 1986). Organizations, however, consist of two things: complex rules and policies, grounded in the institutional code; and human beings who interpret the code and adapt their behaviour according to it, as well as according to their own values.

Thus, rather than being autopoietic, institutions provide 'strong framing'. They stop short of full autopoiesis because embodied human beings are involved; and, as Luhmann (1988a, 1988b) rightly says, if physical human beings are viewed as part of the system, then autopoiesis is impossible because people carry understandings with them that have their origins externally. Moreover, since it is human beings who

interpret the code, and they can move between institutions (and also between organizations), several competing strong institutional framings may be at play. Grace et al (2011) provide a clear example: when forensic DNA evidence is communicated in court, it needs to resonate with both the institution of science (which gives it scientific legitimacy) and the institution of law (which enables it to have utility in building a picture of what happened in a criminal case).

Indeed, Grace et al (2011) show that different stakeholders in these two institutions interpret the same communication of DNA evidence very differently: forensic scientists view the evidence as a statement of statistical likelihood of the origins of the DNA sample, and not a statement about the identity of the offender, while the prosecution lawyers and police jump straight to the question of identity. In Grace et al's (2011) interviews, both the scientists and legal professionals expressed a great deal of frustration about each other's interpretations (the scientists saw the lawyers as jumping to conclusions that are not strictly warranted by the evidence, and the lawyers saw the scientists as stopping short of the identification of the offender that they need). Grace et al (2011) argue that communications of DNA evidence are worded very precisely to allow *both interpretations to co-exist*, as if either of them was undermined it would threaten the legitimacy or the utility of that evidence.

My research is situated within the social and legal systems, and I have turned my theoretical attention to the human agents who receive these communications. While my focus is on both the personal awareness of identity and the organization of identities within a social system, reflections on the character of this system are essential. In my theory building, I have chosen to set aside Luhmann's theory (1988a, 1988b, 2004), and my rationale is as follows. I have used a systemic intervention approach (Midgley, 2000) for my research, primarily because this offers a theory of marginalization (which seems applicable to the face-veil ban in Bulgaria), but also because it advocates theoretical and methodological pluralism: drawing upon different theories and mixing methods in research practice. Theoretical pluralism entails making choices between theories, and such choices should be informed by the purposes of the researcher (Midgley, 2011). Midgley (2011) argues that, when these purposes involve treating other people's theories as sources of insight or inspiration to inform an intervention, but the focus is solely on the development of methods and

their application rather than theory-building, then the fact that those theories might make contradictory assumptions doesn't necessarily matter. However, if the purpose of the research is actually to build a new theory, drawing on insights from existing ones, then the reconciliation or avoidance of incompatible assumptions *does* matter. For instance, it would not be acceptable to propose a theory that assumes (a) that embodied human beings and their perspectives are parts of institutions, yet also says that (b) institutions are composed only of disembodied communications. I would be introducing precisely this contradiction if I were to use Luhmann's theory, as I am interested in looking at the identity-forming effects of legislation *on embodied individuals* (the very individuals who Luhmann, 1986, puts in the environment of the legal system).

However, this is not a mere rejection of Luhmann's theory on the grounds of inconvenience. There is a deeper reason for it: as mentioned earlier, our identities relate to our feelings (instances of affect) that are interpreted as emotions (Feldman Barrett, 2006), and drawing on our tacit knowledge of the social context and past personal experiences really matters. For instance, we *experience* marginalization – our conceptualizations of it are inextricably bound to our interpretations of our felt senses as emotions.

Cultural theory and risk

The study of human organization is distributed among several disciplines: sociology, anthropology, politics, organizational behaviour, psychology and social psychology – plus numerous other niche branches of the social sciences. In my view, anthropology contains the most valuable insights on human organization that are congruent with systems thinking. Anthropology studies systemic patterns of organization at different levels: e.g., family unit, social group, tribe and State (Hénaff, 1998). At all these levels, rules and expectations governing social behaviour are identified. It is the unveiling of higher-level systemic patterns or forms of organization that is really useful for my project, and this is consistent with both my purpose (looking at the identity-forming effects of legislation on individuals) *and* the way that Midgley's (2000, 2011) systemic

intervention methodology treats theory (i.e., requiring coherence for theory-generation).

Arguably, one of the most important anthropologists writing in the 20th Century was Mary Douglas. The consistency between the ideas of Douglas (1966) and systemic intervention transpires from the fact that Midgley's (1991, 1992) marginalization theory was inspired by Douglas's seminal work, *Purity and Danger*. Douglas (1966, 1986), like Luhmann (1986, 1988a, 1988b), asserts that societies generally construct their institutions on binary definitions. In Douglas (1966), the fundamental oppositional binary is the sacred and profane, and she refers to other binary opposites in her explanation of the foundational logic of institutions (Douglas, 1986). An 'institution' here is a formal and/or informal set of rules that prescribes behaviour; or simply, a guide to how things are done (Douglas, 1986).

However, beyond just defining what an institution is, she focuses much more on explaining the different systemic pressures involved in the process of establishing and reproducing social institutions. Her earlier work relies on Durkheim (1915) and Levi-Strauss (1958), who both assume binary codes. In Durkheimian (1915) terms, religion rests upon the sacred and profane dichotomy – where sacred means supernatural, and profane indicates the ordinary. Levi-Strauss (1958) claims that binary oppositions are fundamental to narratives in the media that prompt sense-making, the reinforcement of stereotypes and the cementing of ideas through contrast. It was therefore only natural that Douglas (1966), following in the new tradition of structuralism that Levi-Strauss founded in the discipline of anthropology, would offer her contribution to the growing number of theories of binary oppositions. In her later work, Douglas (1986) did not abandon the idea of binary opposites, but moved on to explore the functions of the complex social processes that bring these opposites into being.

Symbols, rituals and value patterns

An inherent part of the social process is communication. Douglas (1970, p. 40) affirms that human communication is inherently symbolic:

“Symbols are the only means for communications. They are the only means of expressing value, the main instrument of thought, the only regulators of experience. For any communication to take place, the symbols must be structured. For communication about religion to take place, the structure of the symbols must be able to express something relevant to the social order”.

One of the great problems of modernity, she continues, is the lack of a commitment to maintain a common set of symbols. Indeed, there is also evidently a lack of agreement on what symbols represent. The diversity of opinions on the practice of face veiling that I encountered during my research convinced me that there is no consensus on what it means and how it should be regulated. There are plenty of examples where symbols of value patterns are deemed profane and/or illegal. The face veil in Bulgaria is but one.

Douglas (1970) raises concerns about the withdrawal from ritual in modern societies. She defines ritual as a form of a restricted code, only known to a limited number of people. Any structured group where members interact closely develops a special form of coded communication (Bernstein, 1964). Douglas (1970, p.57) considers much of our administrative behaviour to be a “restricted code”. She shifts the lexeme ‘ritual’ away from the sanctity of religion and into the secularity of organizations (also see Foote et al, 2002; Bourque and Johnson, 2008; and Johnson et al, 2010). Thus, the term ‘ritual’ signifies both religious and secular restricted codes. According to Douglas (1970), there has been a withdrawal, first from religious ritual, and then, more recently, from secular ritual as well. She warns that, when we reject ritualized speech (expressions), we enter an unstructured intimacy in our social relations, where wordless communication becomes impossible. Only a ritual structure facilitates a nonverbal channel of communication.

However, legislation against symbolic expression does not inherently reject all symbolic communication. Such legislation rejects a *specific* symbolic expression, like the face veil. Symbols are synecdoches of wider value patterns. If the pattern is religious, then muting its expression prevents the ones who have turned to religion from negotiating their own identities (Douglas, 1970). The choice of the word ‘negotiating’ is deliberate in this context, as it suggests an active engagement on the

part of the individual rather than a passive receipt of an identity ascription (Midgley and Ochoa-Arias, 2001; Midgley et al, 2007; Midgley, 2020).

Value patterns

Whatever it may be – social, religious or secular – the ritual facilitates the enforcement of a given pattern of values, and the code it embodies (see below) also enables group members to internalize the set pattern of values, the structure of the group and its norms. The ritual as a restricted code is the way a value pattern is implemented. In this sense, Douglas's (1970) code differs significantly from that of Luhmann (1988a, 1988b, 2004), where the code contains the oppositional binary of sense-making. What Luhmann (2004) calls 'programming' is the code of Douglas (1970). Similarly, the value pattern in Douglas (1970) is the code of Luhmann (1988a, 1988b, 2004), although Douglas does not limit the pattern to an oppositional couple.

At State level, the pattern of values is usually officially prescribed in a Constitution or other legislative acts. Interestingly, in the motives attached to the ban (in Bulgaria, legislation is always accompanied by a document setting out the motives for it), there were explicit concerns about foreign moral influence. In the language of self-referential systems (Luhmann, 1988a, 1988b, 2004), the legal system was making references to itself and its fundamental principles in relation to the face veil. Face veiling was communicated as incongruent with democratic values, the equality of the sexes and general civic freedoms upheld by the Bulgarian State. The issue with self-referential systems is that powerful actors can interpret events through systemic codes to serve their interests. For instance, the Bulgarian Constitution proclaims Christianity as the official State religion, but it also advocates freedom of thought and religious belief. The debate on the face veil (and the burqa, which covers the whole body as well as the face) included strong references to the official State religion. Thus, the campaign to ban the face veil in Bulgaria relied on a binary opposition, with the Muslim value pattern that is officially encoded in other countries being designated profane in Bulgaria. Examples of this are the following statements made by key influential figures in the debate in the media over the ban:

“With all due respect, this is not traditional Islam. I am of the opinion that in public spaces one should not wear a burqa. We should not underestimate what is happening in the Roma enclaves in Pazardzhik. Belgium had similar practices a while ago, and everybody knows what it has come to now. This is a sensitive topic. One should be careful not to violate religious freedom, but at the same time we should not allow religious motives to aid propaganda and radicalisation” – Chief Prosecutor (news.bg, 2016).

“I believe that, as a society, we are tolerant and open enough. However, we carefully consider what actions should be taken to ensure we have a safe and inclusive society” – Meglena Kuneva, Minister of Education (dnes.bg, 2016).

“This is political Islam. To many Islamists there is no difference between religion and State. Such is the situation in Saudi Arabia – the State follows religious codes” – Alexander Alexiev, Director of the Balkan and Black Sea Research Centre (btvnovinite.bg, 2016).

In this sense, not only was the symbolic expression (the face veil) under attack, but also the wider value pattern it belonged to. This attack involved both the marginalization of the veiled women themselves, and marginalization of the value system they subscribed to. Sometimes legislation targets social rituals without explicitly condemning wider value patterns. However, this does not mean that the value pattern is not marginalized. A good example can be found in the motives attached to the bill that preceded the face-veiling ban. Stark statements such as “radical violent ideology” and “alien Islamic forms” constituted the argumentation behind the ban. However, the text of the legislation itself omits reference to any spiritual practice.

Legislation against the face veil and burqa is not just against the *ritual* expression of a set of values. Such legislation also deals with the human body and its place in society. The human body is the *emblem* of society (Douglas, 1970). Thus, expectations of the body, such as grooming, hygiene and particular movements, are restricted by social pressures. These social pressures are unique to a given value system. In other words, the boundaries of the body and the boundaries of our behaviour are interpreted by powerful social actors entrusted with maintaining the code of the value pattern. Depending on the scale of the group, agents of power may be community leaders, police officers, teachers or parents. Indeed, a bricolage army of agents maintain boundary interpretations in a variety of ways.

The pattern of values is not unanimous though. Indeed, if it were, there would be no perceived need for legal regulation. There is a diversity of patterns (in the anthropological-ritualistic sense described above) that carry the quintessential binaries of social groups. The veil and burqa cover the face and body of a woman, and their reception, enforcement or prohibition is very telling of the core values upheld by any structured social system. However, maintaining the value pattern, Douglas argues, is more important to tribal than to modern societies: “in primitive culture, the rule of patterning works with greater force and more total comprehensiveness. With the moderns, it applies to disjointed, separate areas of existence” (Douglas, 1966, p 41).

I disagree with Douglas here concerning the force and ubiquity of ritual expressions of value systems in modern society, but nevertheless, the growing body of legislation that the so-called modern world has produced to maintain its patterns is by no means the same as the comparatively-stable (in the sense that they didn't continuously grow) rule sets that tribal communities used to live by. The body of legislation continuously expands, as illustrated by my personal experience as a law graduate. During my legal studies, I lived in the same building as a retired lawyer. My neighbour was surprised to find out that, at the time of my studies in the mid-2000s, the duration of the law degree was seven years, while in her time it had been three. Having graduated with her LLM in the sixties, my neighbour had worked through the seventies and eighties, and had retired in the nineties. She was convinced that the increased length of the law degree was due to the rise of different types of new legislation that accompanied the country's economic and technological development.

Institutional theory

One could suppose that different political parties have differing priorities and interests in maintaining previous projects and programmes. For example, the centre-right political party in Bulgaria, GERB, gives primacy to infrastructural projects. For the centre-left Socialist Party, agricultural projects take precedent. Different types of institutions inform different ways of thinking (Douglas, 1970). An institution is a social convention that has gained legitimacy. For example, from the perspective of the centre-right in Bulgaria, roads and railways are means to bring in and benefit from foreign direct investment. This view comes from the established convention that Bulgaria needs foreign investors to develop its nascent market economy. The need for

foreign investment is an established social convention for centre-right leaders and voters, and as such, it is institutionalized. Douglas (1970) even goes on to argue that it is institutions that provide enabling constraints (or boundaries, in Midgley's, 2016, language of systems thinking) for sense-making, as well as repositories of meaning that help us navigate our experience of the world.

The binaries in institutions are invariably rooted in some sort of naturalistic analogy, such as 'male-female', 'life-death', 'weak-strong' and so on. Institutions are the product of human organization and its structure, but they are not agents, even though they enable and constrain human action, expression and communication. Institutions cannot think or feel, which is Douglas's (1970) answer to the communitarian question about whether a social group can feel something.

When the foundational analogy of an institution matches an existing structure, such as an established power dynamic or order of precedence, then the social pattern cements its logical justification. A close match with power or precedence gives an analogy prominence, and legitimacy to the institution associated with it. For example, a competitive society admires its heroes, a sect cherishes its martyrs, and a hierarchy worships its chiefs. Classifications are incorporated in institutions. Moreover, institutions inform boundary judgements – what issues are to be included or excluded and considered primary or secondary: “Institutions create shadowed places, in which nothing can be seen, and no questions asked. They make other areas show finely discriminated detail, which is closely scrutinized and ordered” (Douglas, 1970, p 69).

The boundary idea is central to the project of systems thinking (Ulrich, 1983; Midgley et al, 1998; Midgley, 2000). It is impossible for any analytical inquiry to achieve comprehensiveness. However, by appraising different boundary judgments, issues can be analysed from different perspectives. In the systemic intervention approach, performing boundary critique (the exploration of boundaries) is crucial (Ulrich, 1996; Córdoba and Midgley, 2003, 2006; Boyd et al, 2004; Foote et al, 2007; Midgley and Pinzón, 2011; Helfgott, 2018; Ufua et al, 2018; Nicholas et al, 2019; Helfgott and Midgley, 2020; Midgley and Lindhult, 2021; Sydelko et al, 2021). More precisely, boundary critique entails an exploration of the “exclusion, inclusion and marginalization of both people and issues” (Midgley et al, 2007, p 233).

For a convention to become an institution, its foundational ideas must become entrenched. Douglas (1970) investigates the entrenchment of ideas and their rise to the status of social conventions and later institutions, and I intend to argue that the same process can be traced in the passing of legislation. This is a process of legitimation. Similarly, the entrenchment of a theory is highly dependent on its coherence with other theories, and on its congruence with dominant perspectives in the philosophy of science.

This is the rationale of Luhmann's theory of self-referential systems: as long as events are being communicated in a way that is intelligible to the system, and which resonates with past systemic states, it can be recognized as part of the institution. The institutional binary code (in the case of law, legal/illegal) dictates whether any given communication can be 'heard' by the system. In this sense, the binary dominates all interpretations of communications, and a strict hierarchy would appear to exist, with the binary being at the top of a pyramid of communications that can be used for interpretation, with all new communications having to be routed through it. However, Douglas (1986) contests this hierarchical view of the institutional acceptance of communications: she points to the need for new ideas to be assimilated into a cognitive and social process if they are to become operative. The entrenchment of an institution is in equal measure an embodied-cognitive, economic and political process. To survive, institutions run on stabilising principles, which are analogies to the physical or supernatural worlds.

To the social order, public memory is a repository of meaning. The process of constructing and reporting the past has a limited link to the past itself, but a direct one to the present (Douglas, 1970), which is when we anticipate the future in order to make practical decisions on what to do next (Rosen, 1985; Poli, 2018; Hodgson, 2020; Seth, 2021):

“History emerges in an unintended shape, as a result of practices directed to immediate, practical ends. To watch these practices, establish selective principles that highlight some kinds of events and obscure others is to inspect the social order operating on individual minds”
(Douglas, 1970, p 70).

Historical references to the Ottoman Yoke were common during the campaign that surrounded the face veil ban. After all, “[public] memory is the storage system for the

social order” (Douglas, 1970 p. 70). Some examples were the following statements made by respondents in my fieldwork:

“...but especially in Bulgaria, it’s very easy for people to hate us because of the history. The Ottoman empire ruled here for centuries” (Participant 27, 55, Turkish).

“We are a minority and we are still, what can I say, we are repressed in some ways. It is not like before, when they used to really abuse us. But still – work, education, it’s for the Bulgarians, not for us. It is all because of the history between Turkey and Bulgaria, we are paying the debt. Any child in school can tell you about the Yoke” (Participant 4, 60, Pomak).

“...During Turkish rule, especially in Bulgaria, all the maidens wore niqabs... Because it reminds them of the Turkish rule, that is why they ban it” (Participant 12, 62, Roma).

Douglas does not abandon all hope for intellectual independence, despite the strong grip of institutions. Emancipation from institutional boundaries is possible, and the first step towards it is to discover how our minds allow choices between institutional boundaries and, vice versa, how institutions create boundaries in our minds. It seems that Douglas (1970) is indeed advocating for the performance of boundary critique, as discussed by Ulrich (1983) and Midgley (2000). But the intensity of institutional boundaries is also highly dependent on the type of social system we live in, as discussed below.

Grid and group

Douglas (1970) articulates an elegant theory of social organization that she calls either ‘grid and group’ or ‘cultural theory’. As shown in Figure 1 above, it revolves around two axes, the first of which is “grid” (Douglas, 1970, p. 62). Grid is the equivalent of social pressure on classifications. Durkheim (1915) consistently argues that classification systems emerge as biproducts of social relationships. If social pressures are formidable, then a shared set of classifications is upheld (Bernstein, 1964). Social systems become stable unless counter-pressures are exerted from outside the system. Innovations can also undermine existing classifications.

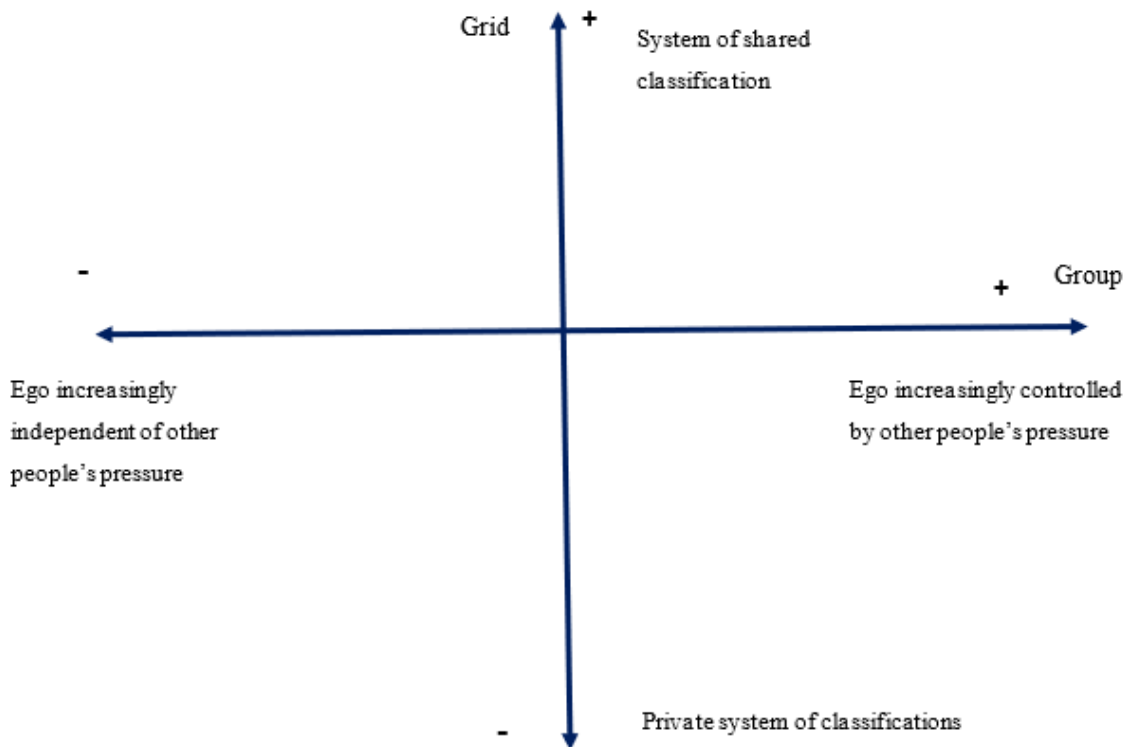


Figure 1. Grid and group (Douglas, 1970, p. 62)

The vertical axis (“grid”) straddles conformity and innovation (Douglas, 1970, p.62). When grid is high, conformity stifles novelty, while when grid is low, innovation comes into being. The theory is expounded at length in Douglas (1970, 1992). The other axis, presented in Figure 1, represents the intensity of the relationship between individual and group. This axis is termed “group” (Douglas, 1970, p 63), and it denotes social pressures and expectations placed on the individual. Towards the right, individuals are bound tightly to other people, while on the left, they are relatively free of social expectations. The point I wish to make by presenting her cultural theory is that Douglas (1970, 1992) evidently moved from binary schemata, like the sacred and the profane, to a more spectral view of social organization.

This is her answer to the then-burgeoning debate between liberals (individualists) and communitarians (collectivists). Douglas's *Purity and Danger*, which was written in 1966, inspired Midgley's marginalization theory (Midgley, 1991, 1992, 2015), which is deployed as part of the systemic intervention approach to boundary critique (Midgley et al, 1998; Midgley and Pinzón, 2011). I believe that her later work is still congruent with boundary critique, and can offer further theoretical tools for the study of identity and marginalization. Classifications such as 'foreign' and 'domestic', 'dangerous' and 'safe', emerge from social interactions. Classifications are also encoded in institutions (Douglas, 1970, 1986).

However, I argue that they become cemented even further in legislation. Legislation in Western democracies partly constitutes the 'grid'. Whether something is sacred or profane is declared officially in this legislative part of the grid. Western legislation demands legitimacy and a form of public consent (Hart, 1961), or at least enough tolerance that dissent doesn't threaten the legitimacy of government. For a social convention to become an institution, it must be legitimized by the public (Douglas, 1970).

Similarly, when these institutions become encoded in legislation, especially new legislation, its passage involves the public in at least some way or form – even when this involvement just takes the form of tacit acceptance (a lack of protest on behalf of the public). Conversely, in the ban on the face veil example presented in Figure 3, established institutions from the social sphere can make their way to legislation and normative solutions. But oftentimes, actors with the ability to influence changes in the political landscape operationalize meanings from public memory, as this is (as we have seen) the “storage system of the social order” (Douglas, 1970, p. 70). The reference to meanings from the public memory is necessary to gain social consent for meaningful political decisions.

Marginalization revisited: acceptance, blame and victimisation

If we return to the origins of marginalization theory, the sacred and the profane are the two absolute value categories proposed by Douglas (1966). These categories are static, in the sense that they describe states. A phenomenon, person or issue is either

sacred (valued) or profane (devalued). In her later work on risk, Douglas (1992) conceptualizes techniques of exclusion and control, where people or groups shift their status from sacred to profane or from profane to even more profane. Exclusion and control are attained through the instruments of blame and victimisation. Douglas reviews blame and victimisation as two strategies of profanizing in her observations on tackling leprosy and witchcraft in pre-modern societies. Lepers and witches are marginalized and profane because they pollute the social order with something 'alien'. However, profanization does not always take the same shape. While witches are accused of bringing disasters and misfortune to the community, and are marginalized through the instrument of blame, lepers are vulnerable because of their sickness and low status. Lepers are the victims of their disease and, since it incapacitates them, they should be separated from the rest of society, in enclosed colonies that rely on charitable alms. Thus, in the case of leprosy, marginalization is achieved through the vehicle of victimisation.

Blame and victimisation are used to cement power, or sometimes for a group to shift their status from profane to sacred: for instance, an initially-profane group may engineer such a change by attracting approval, and thereby attributions of sacredness, by targeting those who are regarded as more profane than themselves. It is the legal system that serves powerful agents in establishing ethical dominance. Through legislation, various actors cement their sacred status too. That is how the United Patriots Party in Bulgaria, who were marginal in the political sphere, gained their power – by focusing their blame on the face-veiling minority.

Thus, as Midgley (2015) describes, actors can shift their relative position from marginal to central, by marginalizing another actor. The shifting of the relative position of this political party happened though the vehicle of blame. The popular conversion to Islam in Muslim enclaves was framed as a disaster for the Bulgarian State and a possible node of radicalisation. Blame for disasters can be cast in two general directions – internally against the community, or externally against a foreign enemy (Douglas, 1992). In the case of the ban, blame was cast against the Muslim Roma *as well as* against a foreign enemy who was seen as destroying the European democratic project. The following quotations are translated examples of the justification for proposing the ban, to be found in Bill 654-01-58 (2016):

“This bill seeks to protect humanism, gender equality and democracy – principles that are fundamental to the value systems of the Republic of Bulgaria, the European Union and other developed democratic States”.

“[T]he present bill aims to protect the dignity of female citizens alongside ensuring their freedom of choice”.

“This piece of legislation addresses the stark need for a State response to the aggressive human rights violations that many women in Bulgaria have experienced lately. Additionally, this bill would reinforce national sovereignty, identity and national security by countering assimilationist and aggressionist attacks that are generally forbidden in the Constitution of Bulgaria”.

“There is a clear conflict between such behaviour [veiling one’s face] and the secular laws of our country. Additionally, there is a conflict with the thousand-year-long tradition of local Muslims who do not express similar radicalism. The true motivations behind these demonstrations of radicalism are not religious, nor humane, but political and funded by money from countries in the Orient and the Persian Gulf. These countries are infamous both for their instability and rampaging Islamism”.

Acceptance is the opposite of blame. Social psychology tells us that formative processes of identity have to do with accepting values, issues and people, and with rejecting other values, issues and people (Tajfel and Turner, 1985). The Roma enclaves have welcomed many Christian-Evangelical and Muslim preachers, and there has been a rise in religious sentiment, both Christian and Muslim.

However, Evangelists were not blamed, and their religious fervour not suspected. Bulgaria is officially a Christian Orthodox country, and Evangelism represents the same Christian value pattern. Hence, a ritualistic expression of Christian identity would not be deemed unacceptable. Indeed, it bears the stamp of full social acceptance. To return to the blame dynamic, two accusations stand. Predatory foreign actors are accused of taking advantage of the vulnerable Roma. On the other hand, the Roma themselves are blamed for buying into the new value system and engaging in a symbolic exchange with the foreign enemy. It seems that the severity of the supposed transgression and its sanction can tell us a lot about the framing of the rule, the transgression and the dominant idea of ‘the good’ (Taylor, 1989).

Wearing a veil is regulated in legislation as an administrative offence. Administrative violations attract fines, while criminal offences are sanctionable by imprisonment, forced labour, etc. – i.e., stricter measures. Thus, the State has deemed wearing a veil as a violation of its rules of public organization, as administrative legislation dictates procedures of civil life (Hrusanov, 2012).

Normally, when discussing the veil, people would refer to procedures and rituals of Bulgarian civic life – which was also evident from the discussions I had. What became apparent though, is that blame, victimization and their severity illuminate the degree of marginalization of people and issues. The anti-securitists in Figure 2 represent the State's view on the burqa – that it poses a danger to society, and it is a form of repression of women. Securitists and paternalists are the two pro-ban perspectives I identified in my research. It is possible that there might be other perspectives out there, and perhaps if I had had the luxury of funding for a longer field trip, I could have engaged with more participants.

This might have uncovered further perspectives, or more nuanced sub-perspectives, although it is impossible to know for sure. I therefore undertake my analysis of the four perspectives I have identified in the knowledge that I am basing it on a limited data set (although one that was not possible to extend within the time and resources available), and I advance my interpretations and theory developments as contributions to the literature that could be open to future revision if contrary evidence emerges in further research. The figure below represents the ban and the two broad camps that arose from the social sphere.

The camps (pro- and anti-ban) are broadly defined by their interpretation of the ban – as either sacred or profane. How the ban is seen is dependent on the degree of shared classifications with the State, or what Douglas defines as “grid” in Figure 1. The left side represents a weak alignment with official State-cemented values, and the right side represents more congruence with State values.

Among the respondents engaged, four main perspectives emerged, and they are in a mutual systemic marginalisation dynamic. The ‘securitists’ have the narrowest boundary judgement, as they have a limited evaluation of stakeholders. This group aligns their thinking with the blaming of both Roma minorities and foreign actors that represent Muslim majority countries.

The 'paternalists' see women as beneficiaries of the ban, and their boundary judgement is wider than that of the securitists, but they victimize the veiled women. This is so because, to paternalists, the veil is a restriction, a symbol of structural violence and the forced immaturity of women. Thus, their view is also defined by both victimization and blame, even though the blame is directed at another element of the veiled women's environment, and not against the women per se. Nevertheless, the women are still marginalized because they are treated as passive recipients of the structural violence, with little or no agency. Thus, to reflect the victimization of women and the indirect character of blame, the thinner dotted lines signify that marginalisation is less intense when coming from the paternalist camp.

The 'anti-securitists' and 'humanists' present alternative moral judgements on the face veil and burqa. They use wider boundary judgements because there is a bigger variety of stakeholders involved, from their points of view. Anti-securitists react negatively to securitists, and they believe politicians are using people's sentiments to advance political agendas. Thus, their position is also influenced by blame, pointed at various actors: the anti-securitists blame the State, the media and the people for being Islamophobic, but some of them also blame the Roma. To my surprise, my research uncovered some anti-Roma statements in the anti-ban camp, particularly from the anti-securitists. Thus, some anti-securitists shared blaming attitudes with the securitists.

The veiling women of Roma descent in Bulgaria were blamed for being illiterate, for accepting Saudi alms, and for veiling for the wrong reasons. Thus, although the anti-securitists were anti-ban and shared some values with the humanists, they still marginalized the veiling Roma. This illuminates the fact that, even when a law that involves marginalization is opposed by citizens, this does not necessarily mean that they reject the stigmatising values that uphold it. As the anti-securitists only marginalized the Roma, their blame was not extended to foreign actors or to veiled women of other descent. It appears that there are many levels of marginalization, and when a stakeholder marginalizes agents of power (e.g., the politicians) and those who follow them in a marginalizing strategy (e.g., the ban), this does not automatically mean that the victims of this marginalization – in this case, the veiled Roma – are not going to be profanitized by the same stakeholder.

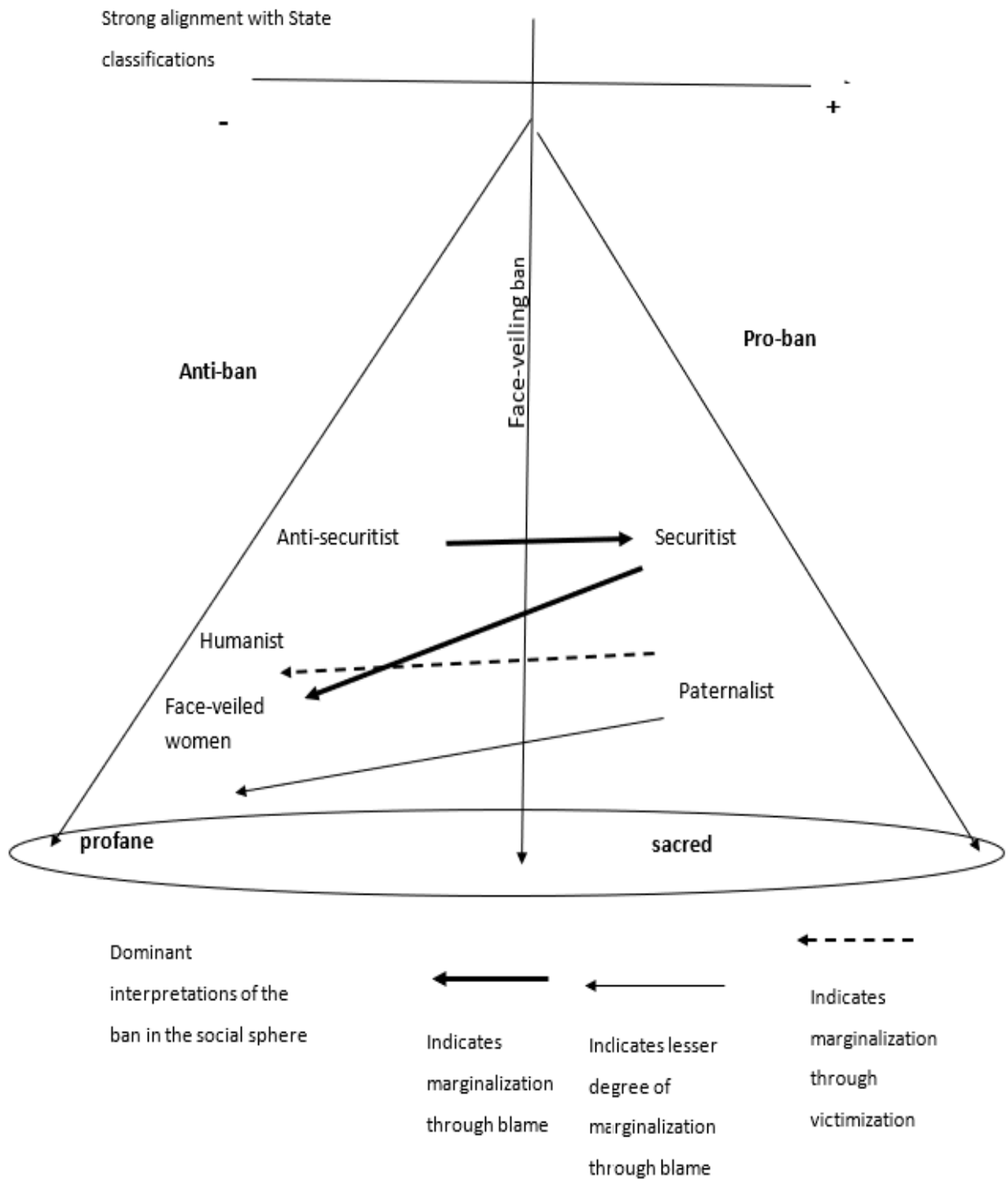


Figure 2. The four perspectives and their marginalization dynamic.

While the anti-securitists blamed the State for the passing of the ban, the humanists, on the other hand, did not cast any blame. Nevertheless, there was a sense of rejecting the official value judgement; a critical stance that everyone’s humanity should be respected. All of the veiled women I interacted with subscribed to the humanist

perspective. However, some of these also expressed some acceptance of their relatively marginal position in society.

This is why I suggest that the relationship between the pro-ban stakeholders and the humanists is not one of equal opposites (each blaming the other), because there is no blame in the humanist perspective. Thus, I have modelled the humanists as not actively participating in the marginalization dynamics (there are no arrows emanating from the humanists in Figure 2). By this, I do not mean that they are not actually subject to marginalization – indeed, the pro-ban perspective ascribes profanity to the wearing of the veil, and all the veil wearers understood that the legislation cemented their marginalization in place. It's just that their perspective sought to transcend the blame culture instead of treating others as they were being treated.

However, the *degree* of profanity that a legal act attributes to a group is also an important aspect of the analysis. Evidently, there is a difference between a custom, such as adultery, being frowned upon, and an Act of Parliament that criminalizes extramarital sex. I have illustrated the different degree of marginalization with the thickness of arrows in the model. For instance, securitists and paternalists heavily marginalize the veil-wearers, and they were the ones who advocated for this act to be legislated against. Anti-securitists marginalize the Romas who wear the veil, but not the act itself; and in any case, they do not endorse a ban on the act. Thus, their marginalization is signified with a dotted arrow. The concept of profanity is not binary: it exists on a spectrum, and the same is true for the concept of sacredness. In terms of identity formation, these categories are related to processes of acceptance, blame and victimisation.

Legal interventions into the sacred and profane

Human beings do not dwell in a vacuum: we create social units and organize within them. Social identity theory (Tajfel and Turner, 1985) postulates that people self-organize in groups, and that from this self-organization, value patterns emerge. It also elaborates on the human tendency to seek out distinctions, make relative comparisons and largely-marginalize group outsiders. The grouping of people is the result of processes of classification, identification and socialisation.

There is no 'starting point' where either the individual or the social is prime. The individual negotiates their behaviour with the collective, and the collective negotiates rules for social behaviour with individuals (Giddens, 1984; Gregory, 1992; Etzioni, 1993). There is agency at both scales. However, I use the term 'negotiate' loosely, as I do not wish to be politically naïve – some forms of organization leave very little space for the individual adjustment of rules.

Midgley's marginalization theory illuminates processes where binaries inform value judgements. A marginal element is considered as having a different status, depending on the perspective of the observer. This status could be sacred (highly cherished and valued) or profane (devalued, feared, blamed). Recall that the ban on the veil involved the publication of motives accompanying the legislation, which expressed blame of minorities and Muslim-majority countries. However, my respondents did not necessarily align their value judgements with the ban. Indeed, four distinct perspectives emerged, all defined by the justification of their value judgements. The pro-ban securitists cherished national identity and security, while paternalists saw the need to defend freedom and the emancipation of women. On the other hand, anti-securitists prioritized the freedoms of citizens but also the responsibilities of the State towards protecting freedoms and ensuring security by providing education, infrastructure and medical services to its citizens. Finally, the humanists advocated for the universal freedom of non-violent faith expressions and treated the veiled women either as sacralized persons who deserve admiration, or as normal, regular citizens who should not be separated and distinguished on the basis of their faith and lifestyle.

I believe that introducing consideration of the role of legislation into marginalization theory (Midgley, 1991, 1992, 2015) could illuminate the process by which value categories are cemented. Recall that Midgley's (2009) critique of Luhmann (1988a, 1988b) is that social systems do not just hold binaries but have dominant moral categories that establish a 'strong framing'. Similarly, Douglas (1970) claims that an institution must be socially entrenched and widely accepted for it to be operational in informing value judgements.

Figure 3, below, aims at illustrating the process by which the status of veiled women transcends systemic boundaries and changes from invisible to profane. It is the legal

system that serves powerful agents in establishing ethical dominance. Through legislation, relatively disenfranchised actors can cement their sacred status too. That is how the nationalistic party, who were marginal in the political sphere, gained their power – by focusing on the face-veiling minority. These now-powerful people were marginalized until recently, and only by making the face-veiling Muslims profane, on the grounds that they supposedly accelerated the growth of terrorist enclaves and foreign influence, were they able to shift their relative position from marginal to central. The shifting of the relative position of this political party happened through the vehicle of blame. Once many people in the general population aligned with this blaming (as it tapped into historical fears), political parties that condoned the veil could be tarnished by association.

In the case of Bulgaria, the blame is distributed between the Roma (internal transgressors) and foreign influencers (foreign Muslim preachers). The disaster of a veiled terrorist has not yet happened, but political agents claim that it is coming – and this is typical when the language of risk is used. Risk is always future-oriented, hence speaking of risk makes present actions hostage to future detriments (Douglas, 1992).

Here it is useful to point out something else I found during my research – that approximately ten years before the many conversions to Islam in the Roma community, the Roma enclaves attracted the attention of Evangelical preachers, who moved into those communities to convert them, and churches were built by various foreign religious organizations. However, the Muslim charities that had the same function of bringing religious structure into marginalized communities around the world, attracted negative attention. Indeed, one of my respondent's brothers was an Evangelist, and many of the men arrested for extremism were builders who, at the time of my interviews, were working on an Evangelical-Christian temple in their village. Hence, the temple remained on pause until the men were released, and they later finished it. It seems that, within the Roma community, there was no issue between the Muslim and Christian converts, who sometimes even came from the same families. Moreover, Muslims would work on the construction site of Christian temples. Blame was simmering *beyond the boundaries of the Roma enclaves*. The Muslim Roma attracted blame, not the Evangelist converts, because for a blaming strategy to work,

the dominant political actor must concentrate it on the most marginalized social group (Douglas, 1992).

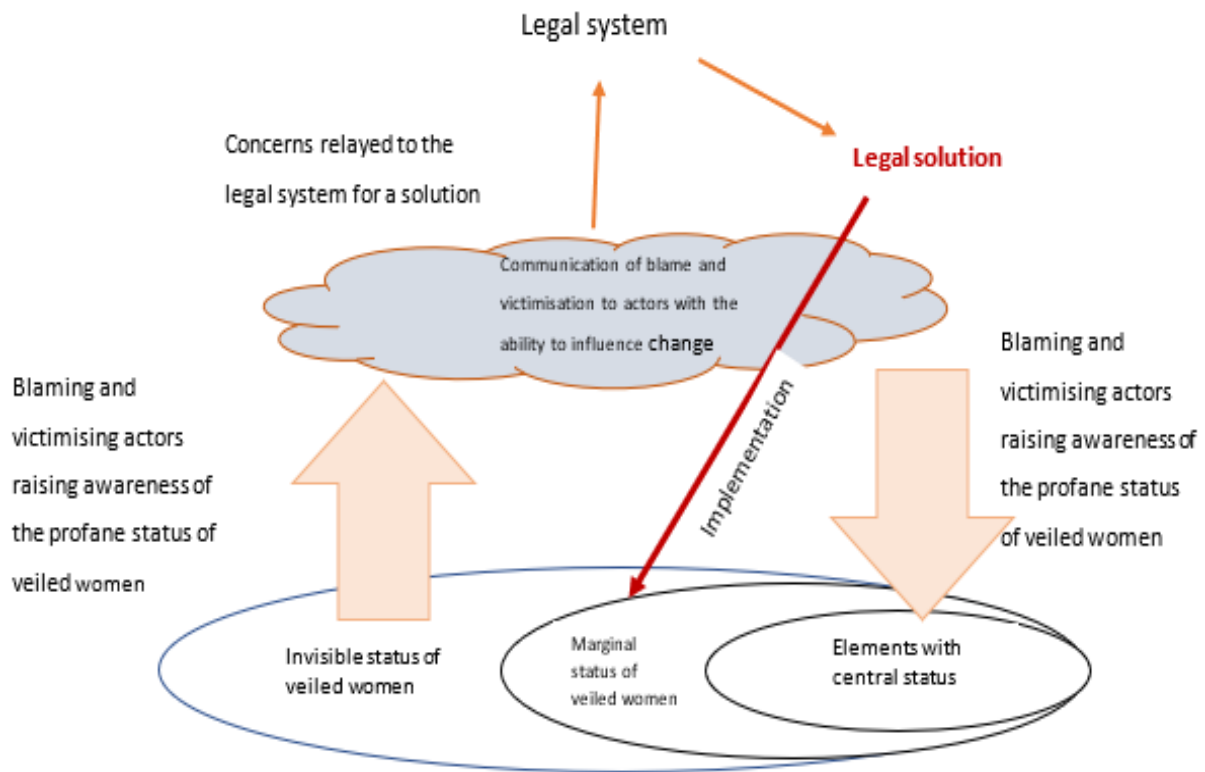


Figure 3. Legal intervention attributing a profane status.

The goal of a blaming strategy is either to cement the existing system or to cement changes to the existing system by justifying a pattern of power. The language of risk, on the other hand, enables a spurious scientific claim of causality – marginalized people who are Muslim converts are at risk of radicalisation. Risk is equated with danger, and this is problematized by Douglas and Wildavsky (1989) and Douglas (1992). It is easier to reinforce negative attitudes than to generate them from scratch. Hence, it was the coupling between the profanitized marginalized Roma on the one hand, and the symbolic expression of Islam (the veil) on the other, that led to a

strongly-consolidated blaming strategy. Thus, after only a year of campaigning against the face-veiled Roma, the United Patriots Party gained significant electoral support.

Finally, the veiled Roma are supposedly at risk of radicalisation, which is additionally showing them in a marginal victim position, where they are 'sinned against' and must be 'protected'. The sinning against is done by external actors (foreign preachers), who represent other (alien) value systems that are deemed profane by the party campaigning against them.

To muster the dominant reading of boundaries, the patriots utilized the tools of blame and victimisation. Indeed, the United Patriots used the idea of the old 'arch-nemesis', the Ottoman empire, to profanitize Saudi Arabia and other Muslim countries where the veil is acceptable. All patriotic parties in Bulgaria (and elsewhere) use old episodes of marginalization to establish their reading of the sacred and profane through the instrument of blame.

The Ottomans are blamed for enslaving the Bulgarians of old, and the Saudi, Syrian and Iraqi people are blamed for 'recruiting' or 'brainwashing' the victimized Bulgarian Roma. The blaming agent who seeks to cement their sacred status is always searching for a new target, and relying on archetypical enemies is a common political strategy. However, the twofold marginalization of the Roma, on one hand, and the ritual expression of the face veil and burqa, on the other, generate different patterns among the thinking and identities of the respondents.

Before 2016, the status of veiled women under Bulgarian legislation was invisible. By invisible, I mean that the legal and social systems did not include the veil within their boundaries. The women who wore the veil, though, were not *literally* invisible; they were treated as subjects of law from the viewpoint of legislation. However, while there have been accounts of general islamophobia (Taras, 2013), the issue of the veil was not discussed in the media and political circles until 2016.

Different actors with the ability to influence change engaged in the business of shifting the status of the veil. The example of cementing the profane status of veiled women illustrates a process that is largely ignored by sociologists and social identity theorists

alike. The ultimate legitimacy in any country is with its official agents of power: the kings, governors, prime ministers, presidents and parliamentarians who hold the license to jurisprudence and its implementation. The State has a monopoly of legitimate use of force to implement legislation. For example, Kelsen (1934) asserts that the power of all legislation boils down to its implementation – it is only regarded as important by society if it satisfies the condition of *sanctionability* (i.e., sanctions can be imposed when the legislation is acted upon). In the case of the veil, people who cover their mouths, ears and nose are subject to fining (Act Limiting Garments Partially or Fully Covering the Face, 2016).

Upon establishing such a violation, a judge can implement a fine that is clearly defined in legislation. It follows that, in Bulgaria, the sanctionability condition is met, and the profane status of veiled people is guarded by a judicial and administrative apparatus. Conversely, in the countries where formal institutions have not cemented a rule on covering one's face, the people who cover their faces are not attributed a profane status. This may seem obvious, but too often the analytical focus of social scientists is aimed at informal institutions, social groups, culture and so on, while legislation is ignored, perhaps because it is the subject matter of the discipline of law and therefore placed outside the boundary of sociology. It is the formal rules that help cement the value terrain – what is lawful and unlawful, forbidden and allowed, is codified in the rules that facilitate human organization, and because of their relative stability and enforceability, these rules act to shape thought and behaviour.

Conclusion

In this paper, I have argued for the need for a new systemic theory of identity that considers legislation as a source of dominance over value judgements. I presented my views on Luhmann's (1988a, 1988b, 2004) self-referential systems theory of institutions, and on Douglas's (1970, 1986) grid and group theory, as well as her analysis of ritual expression (1970) and risk (1992).

The social system must be structured according to the values upheld by the State. Thus, a ban on the public wearing of the veil, or a ban on public smoking or public drinking,

all allude to the pattern of values that the State keeps dominant. Because we live in a capitalist democracy, and governments change when mandates expire, some of these changes are informed by the values of just one party or a coalition government, and its successor either continues working in this same direction, moves away from the social change, or even retracts it. However, rules that are institutionalized in legislation are harder to amend than rules that do not have legislation backing their formulation. This is because legalized rules follow a strict, systematic process and are hard to initiate and see through.

Identity processes are best modelled through Midgley's (1992, 2015) marginalization theory, as issues and people in the process of socialisation and identification are either framed as sacred or profane. However, no theory to date includes the ethical dominance exerted via legislation and its links to personal morality. What is lacking in the literature is a systemic theory of identity that relies on theories of marginalization *and jurisprudence*. It is precisely this kind of theory that I have begun to develop in the current paper, drawing on the ban of the face veil in Bulgaria as an empirical example.

I have argued that, while binary oppositions are foundational for social conventions, their absolute contrast is too restrictive for illustrating profanity and sacredness. Human evaluation is no simple thing, as Midgley's (1992) early work on marginalization acknowledges, and claiming that negative evaluations exist on a spectrum is almost as reductionist as claiming they can be summarized in one single word: profane. Still, presenting evaluation in a graduated manner is at least a step on from the rigidity of binary categories. I have also argued that, in law, issues can move from the realm of invisibility to be attributed a sacred or profane status. Sometimes by profanizing issues such as the veil, other marginal actors become central.

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