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Blandine Chelini-Pont

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Legal Secularism in France Today: Between Two Paths

(*Trends of Secularism in a Pluralistic World*, JAMES CONTRERAS, ROSA MARIA MARTINEZ DE CODES (ed), 2013)

Blandine Chelini-Pont
Aix-Marseille University, France

French legal secularism, a large part of the so-called ‘*laïcité*,’ gives the impression of being a sturdy, time-honoured tradition, very stable in its practice and well rooted in its ideological foundations. This is the ‘official’ framework laid down by the French constitution, which goes beyond prohibiting relations between state and religions. It is, in fact, supposed to protect and promote the philosophical background of human rights and the philosophy of the Enlightenment within the Law. Furthermore, French legal secularism has evolved in parallel with social change, and hand-in-hand with the emergence of new common values such as pluralism and tolerance. In this advance, it is far from monolithic, subject to contradictions and driving in new directions. Consequently, French secularism is now facing two different paths: either it accepts religious pluralism with new social patterns that create and share, or it defends its secular specificity, mixed with a kind of public Catholicism, as a reaction against visible religious diversity and Muslim affirmation.

Constitutional Context

What defines French legal secularism? It is based on four well-founded legacies handed down gradually from the past: no confessional state, freedom of thought, religion-free state laws, and freedom of worship. Since the French Revolution, the state has grown no more confessional, with the exception of during the time of the Restoration (1815-1830). And even during this period of monarchical power, freedom of thought and opinion, including religion, incorporated within Article 10 of the 1789 French Declaration, was never contested. Public worship could have been limited between 1801 and 1905 to four religions in the concordat-based system: worship was no longer obligatory, and there were no restrictions on any type of worship for other denominations in the private sphere.

Since the Revolution, and especially since the establishment of the Civil Code at the beginning of the 19th century, the only laws recognised by the State have been the ones it has passed itself. The only legal relationships between people are governed within this legal framework. The State doesn’t *a priori* restrict its laws for religious reasons that its citizens oppose. No religious framework, no religious law is now legally binding, exerting its heavy social and moral weight upon population and thought; until the late sixties, however, family and marital relations in the legal sense remained closely linked to Catholic tradition. In addition, the State has organised a state-run, nondenominational education system, and even if it had felt the strong temptation, depending on the political majority in the Parliament, to confuse the legal obligation to provide minimum education for any child through a unique public education system, this temptation was always moderated by respect for fundamental liberties. This system of recognising religions was brought to a close by the 1905 Law of the 9th of December.

After 1905, freedom of public worship for all denominations was virtually ensured by two other laws, in 1906 and 1907. Henceforth, religious denominations have organised their life into simple private associations (1901 Law on Associations) or into specific associations of worship (1905 Law).

The current French Constitution sums up this legacy at a glance in its first article: “*La France est une République indivisible, laïque, démocratique et sociale. Elle assure l'égalité devant la loi de tous les citoyens sans distinction d'origine, de race ou de religion. Elle respecte toutes les croyances.*” The indivisible, secular, democratic, and social French Republic ensures equality before the law for all citizens, regardless of origin, race, or religion. It respects all beliefs. This literal recognition of secularism, backed up by equality and the prohibition of discrimination, has no more precise definition of the impact on and content of the secular principle within the text of the Constitution.

However, the 1905 Law, concerning the separation of state and church, is considered (but not entirely, as some decisions of the State Council reveal) to be a subsidiary source of constitutional framework, since it included several fundamental principles, ranked by the State Council or Constitutional Council at the level of constitutional value. This is the case of the principle of ‘separation’ (no establishment, no direct financing), and the principles of freedom of conscience and worship.¹ The 1905 Law is the appropriate complement to understand legal secularity or *laïcité*. The Constitutional Council took a new step in its interpretation when it declared, in a decision on the 19th of November, 2004, that “Article 1 of the French Constitution forbids anyone to take advantage of their religious beliefs to overcome the common rules between groups of members of the public and individuals.”² More recently, in a decision of the 22nd of October, 2009, the Constitutional Council reaffirmed the value of the constitutional ranking of the principle of *laïcité*.³

In this whole framework, religious freedom is presented as a very first principle, through the consecration given it by Article 10 of the French Declaration, itself included within what is called by French jurists the “constitutional block” accompanying the Constitution. Religious freedom, as freedom of opinions and beliefs, is completed by legal respect for all beliefs, as quoted in Article 1 of the Constitution, and by freedom of conscience, –as we saw it – a principle of constitutional value since 1977.⁴

Therefore, even if very subtle distinctions could be made between freedom of opinion, conscience, worship, and religion, the last of these could not be exerted without the others. Other freedoms, constitutionally recognised, also give religious freedom its effectiveness.

¹ Decision 23 November 1977, no. 77-87 DC, *Sénat, Yvelines* (*Journal officiel*, (25 November 1977): p. 5531, Recueil, p. 87, <http://www.conseil-constitutionnel.fr>; *Gaz. Pal*, 9-10 and 11-13 (June 1978): pp. 293-300, note Flauss). In a ministerial reply of 13th November, 1995, no. 20155, the Foreign Minister stipulated: “*Les principes posés par la loi du 9 Décembre 1905 doivent être considérés comme ‘principes fondamentaux reconnus par les lois de la République’ en ce qu’ils précisent le principe constitutionnel de la laïcité de la République française rappelé par l’article 1 de la Constitution du 04 Octobre 1958. Tel est le cas des principes de liberté de conscience, de libre exercice des cultes et d’interdiction de subventionnement des cultes par l’Etat, le département et les communes, énoncés par les articles 1er et 2 de la loi du 9 Décembre 1905*” www.questions.assemblee-nationale.fr.

² Decision of 19 November 2004, n° 2004-505 DC, *TECE*, (considérant 18), *Journal officiel* (24 November 2004): p. 19885, Recueil, p. 173, <http://www.conseil-constitutionnel.fr>.

³ Decision of 22 October 2009, no. 2009-591 DC, *Loi tendant à garantir la parité de financement entre les écoles élémentaires publiques et privées sous contrat d’association lorsqu’elles accueillent des élèves scolarisés hors de leur commune de résidence*, (considerations 4, 5, and 6), *Journal officiel*, (29 October 2009): p. 18307, <http://www.conseil-constitutionnel.fr>.

⁴ Decision of 23 November 1977, no. 77-87 DC, *Sénat, Yvelines*, (consideration 5 alluding explicitly to Article 10 of the French Declaration).

There is the freedom of expression,⁵ without which it would be impossible to express religious beliefs; freedom of assembly,⁶ which permits meeting together, privately or publicly; and freedom of union and association⁷ - very necessary when founding religious associations. These fundamental and associated freedoms allow everyone to express their beliefs. Consequently, we can conclude that religious freedom is a large part of the French secular regime, constitutionally guaranteed.⁸

Strong Consensus over the French Secular Model

Beyond this constitutional framework, what does French acceptance of the Republican secular model really mean? There is an unquestioned consensus among the population and the political universe regarding the legitimacy and efficiency of the secular model in defining and representing French citizenship, and furthermore in representing French 'political' exceptionalism. There is no debate in France over the secular model being a bad one or unadapted to current times. Secularism is seen by no one in the political spectrum as ill-founded, as if this would wrongfully separate the political from the religious; it would oppress civil society with its own ideology; or discriminate excessively against the religious newcomers. Rather, there is no contesting the qualification of the entire French legal, civic, and political system as 'secular.'

No contesting 'laïcité'

Within the debate in the United States, since the 1990s, on the sense of the American Constitution and the spirit that inspired the Founding Fathers, we are indeed aware that the expression of a secular state or estimation of the fitness of any legal secularism could have a negative connotation today in the West, and could lead to wild criticism against its supposed ideological radicalism, its ethical weakness, or its spreading atheism. The attacks against the American separation for example, that emerged in the States from the 60s, are now a current part of the American political debate,⁹ introduced by Christian conservative slogans and even by some neo-conservative thinkers.

According to those groups, the thinking of the Founding Fathers was misinterpreted and Americans must return to a healthy understanding of their Constitution: the state has no official church, of course, but separation does not mean religion-free neutrality, which is, in fact, a betrayal of the best Western tradition. The American political base is rooted in a Christian political tradition and led by respect for Christian values and the Christian ethos of its civil society. Here, modern liberalism is considered responsible for the 'disgraceful' deviations of our contemporary societies; their blinded immorality, and also the 'atheism' of the state, under the guise of 'neutrality.'¹⁰ A renewed version of relations between state and law on the one hand, and the Christian religion on the other, has been established among

⁵ Article 11 of the French Declaration.

⁶ State Council, 19 May 1933, *Benjamin*. Freedom guaranteed by the laws of 30 June 1881 and 28 March 1907.

⁷ Constitutionalised, through the Law of 1 July 1901 on free associations, in the State Council decision of 1971 quoted below.

⁸ See Messner (F.), Prelot (P.-H.), Woehrling (J.- M.), *Traité de droit français des religions* (Paris: LITEC, 2003) p. 43.

⁹ Charles Rice, *The Supreme Court and Public Prayer* (New York: Fordham University Press, 1964). Brent Bozell, *The Warren Revolution* (New Rochelle, NY: Arlington House, 1966).

¹⁰ Daniel J. Mahoney, "The Conservative Foundations of the Liberal Order, Defending Democracy against its Modern Enemies and its Immoderate Friends." *Society*, 48.6 (2011): pp 539-540.

conservatives; this version greatly undermines the separatist tradition for the benefit of a renewed regime of Christianity.¹¹

The Catholic version of conservative criticism of American secularism is particularly well developed, a version founded on re-honouring the ‘divinely ordained natural law’ in the Constitution, derived from the ‘classic’ Thomist tradition of the Catholic Church. This divine natural law is ultimately, according to its proponents, the true basis of the Constitution, and some leaders, such as Mgr Chaput, Archbishop of Denver, are beginning to speak out in no uncertain terms. According to this version, permeating a portion of Catholic doctrine today, secularism is defined as “an aggressively secular political vision and a consumerist economic model that results – in practice, if not with a stated intention – in a new form of atheism encouraged by the State.”

According to Mgr Chaput, “the deliberate intention of the State is to destroy the Christian values of society and to replace them with individualism and hedonism by scorning the beliefs of its citizens.”¹² This debate is coming to Europe and it could soon be combined – thanks to active networks from the United States – with the internal debate on Europe’s Christian roots and the imagined Islamisation of the Old Continent. As such, Europeans may again be divided over the notion of secularism and a fringe may challenge this system, traditionally designed to protect the freedom of the people with regard to religious and democratic pluralism.

The *Lautsi case* before the European Court of Human Rights could be seen as emblematic over the definition-based debate on secularism in Europe. Although the judges have found a very smart interpretation on the State’s neutrality that could reconcile everyone regarding the definition of legal secularism, the crucifix battle was often understood as a battle against an anti-Christian ideology in favour of cultural relativism and the State’s hostility to the religious culture of the majority population, more than as a process of thorough questioning on secularism as a practical and fair system for organising individual and public freedoms, thanks to the distance of the State and the law from any ‘public’ religion.

France, especially in its conservative circles, is not yet affected by the phenomenon of Christian criticism towards legal secularism. France seems to be immune to any religious Christian claim in its politico-legal order. Why? Beyond the joke that it would be difficult for France to encounter this type of criticism because it stopped being a Christian country a long time ago, the French understanding of secular State and legal secularism is not at all pejorative. It represents for the jurists of this country the exact definition of their state and the exact place allowed by law for religion in their society. A secular state is a nondenominational state, without a fundamental or concordat-based link with one or several religions, whose philosophical ideal is democratic and republican, and whose values are liberal. These ideas are uncontested. Since the synthesis made by the 5th Republic in 1958, a consensus was born, never rejected.

It can be said that the traditional churches in France, Catholic and Protestant, are deeply integrated within the organisation of French secularism. Protestants, as a persecuted minority under the old regime, have always had the desire at heart to develop a fully civil politico-legal order in France. Catholics arrived later in the Republican system. They became Republican in stages, after having been in a quasi civil war against the legacy of the French Revolution. After the condemnation of the ‘*Action française*,’ a national royalist anti-republican party that dominated the French Catholic world for a long time, French Catholics in politics were

¹¹ *The Naked Public Square Reconsidered: Religion and Politics in the Twenty First Century*, Christopher Wolfe, ed. (Wilmington, DE: ISI Books, 2009).

¹²Speech to the Baptist University of Houston, 1st March 2010 on <http://chiesa.espresso.repubblica.it/articolo/1342344>. See also Charles J. Chaput, *Render Unto Caesar, Serving The Nation By Living Our Catholic Beliefs in Political Life* (New York: Doubleday, 2008).

influenced by renewed Catholic thought on democratic humanism¹³ and also by the historical movement of social Catholicism (deeply rooted in France), whose founders were the pioneers of secularism in the 19th century, calling for the separation of Church and State as early as 1830.¹⁴ Once the issue of academic freedom was resolved – a central issue for the loyalty of Catholics to the Republic – French Catholics easily became secular with regard to the legal-political system.

At the same time, France is a less ‘liberal’ country than the United States, for example, in the sense that the debate over the legality of certain modern forms of liberalism concerning morals is less fierce in France than elsewhere. Maybe that goes against some ideas, but France’s legislation is more marked by ‘Christian’ values than other European countries or the United States, though this is not openly admitted. French law is one of the most restrictive in bioethics, for example, in surrogacy (forbidden), assisted human reproduction, or embryo manipulation, etc. In some ways, the State and politics in France have naturally conservative attitudes in terms of public morality, and maintain strong restrictions on individual liberties concerning biotechnology and family laws.

Same sex marriage does not exist in France; everything possible has been done by the authorities to avoid it, in the same way that it has avoided admitting the right of homosexual couples to adopt children, even within the legal framework of the Civil Solidarity Pact, a name given to the contract legalising domestic partnership in 1998 as a watered-down substitute for homosexual marriage.

The majority of people in France consider the legalisation of abortion as a public health necessity, and a matter of prevention, not an ‘absolute’ right symbolising the freedom of women and the triumph of feminism. French feminists are mostly focused on obtaining more legal equality and protection for women in the workplace, and more public support for juggling motherhood and work. In fact, reconciling work and the expense of motherhood is a high priority in France: in addition to the family wage supplement, depending on the number of dependent children, working timetables in France are modelled around school holidays and school days are modelled around parents’ working hours. As a result, many ethical/family-related debates that could become heated elsewhere, and lead, in turn, to challenging the secular model as a source of these problems, have been resolved from a French point of view. These debates still exist in France, of course, but are much less fierce than elsewhere because this country, without really admitting it, lives with a rather striking conservative consensus, while claiming to be the exact opposite, that is, a country with total freedom of morals and thought....

Theoretical and Academic Context

The only ‘intellectual’ protest comes from the academic circles on the question of the ‘depth’ of constitutional secularism. Quarrels concern the exact scale of the general principle that defines the nature of the French republican regime, and, more precisely, the nature of its Constitution. This principle is that of so-called *laïcité*. How far is or should *laïcité* be the civil religion used as a narrative for the French population? Does *laïcité* constitute the core of French identity, or is it only the expression of the French rule of law and nothing more?¹⁵

¹³ Bruno Dumons, *Les catholiques en politique, un siècle de ralliement* (Paris: Desclée de Brouwer, 1993). Denis Pelletier, Etienne Fouilloux, Nathalie Viet, *Les Catholiques dans la République* (Paris: Editions de l’Atelier, 2005).

¹⁴ Philippe Portier, *Eglise et Politique en France au XXème siècle* (Paris: Montchrestien, 1993). Denis Pelletier, *Les catholiques en France depuis 1815* (Paris: La Découverte, 1997). Alec R. Vidler, *A Variety of Catholic Modernists* (Cambridge: Cambridge University Press, 2009).

¹⁵ On this question, see Professor Portier’s chapter. See also, Blandine Chelini-Pont, “Is Laïcité the French Civil Religion?” in *The George Washington International Law Review*, 41.4 (2010): pp. 765-815.

Depending on the answer given by analysts, the organisation of religious pluralism in French society will be considered as dangerous, possible, or, on the contrary, welcome.

For the left-wing part of French intellectuals, religion is dangerous in its taste for power and its impact on personal consciences, and the secular state does completely separate itself from religion. In this vision, religion is above all seen as the canon of binding beliefs and behaviours that encroach upon people's freedom of thought and action. The secular state is finally the concrete manifestation of a meta-legal ideal, a secular ideology, which is that of an emancipated, progressive – and also humanist and compassionate – society. To paraphrase the expression of the philosopher Eric Voegelin, the supporters of the *Laïcité-Identity* are convinced Gnostics.¹⁶ But these orthodox supporters of secularity have never been in a majority in French academic and political circles, which are characterised by strong critical diversity.

The majority of French intellectuals, historians, jurists, and philosophers admit that the Republican state has been tempted to transform the regime into a new faith but was slowed down, however, by its submission to human rights. They recognise that conflicts wane over time and that a synthesis took place in the 1960s. The system led to a situation of appeasement and the French state did not switch to compulsory civil faith.¹⁷ It remained at the service of democracy and freedom, and guarantees the neutrality of and equal access to public services; the prohibition of discrimination on sexual, racial, ethnical, physical, or religious grounds; and the equality of citizens before the law. It protects freedom of belief and conscience for all citizens as well as those who settle in France.

The responsibility of this state in the secularisation of French society, i.e., its detachment from religion in daily life, is still debated. Are the French becoming less Catholic because of the strong anti-clericalism of the Third Republic and its state school philosophy? Are they becoming less Catholic because this religion is no longer obligatory, or since population renewal is by those without a particularly religious culture or even a non-Catholic culture? Have they become 'secular' because of some sort of mechanical logic in modern society? On these questions, opinions are extremely divided.¹⁸ Finally, we are left with a strong proportion of academic researchers who attempt to extricate the French *Laïcité* from its old Messianism, and insist on the specific implications of constitutionally solid values. In a way, these authors wish to render more technical and operational the possibilities offered by the rule of law. They want reflection on the future of France in a pluralistic society to be more geared to prospecting and forecasting, even if this requires a further grinding down of national narrative, where diversity would become the most revered value.¹⁹

Positive Versus Negative Secularism: Tensions in the French Secular Model

Though there is an implicit understanding not to question the secular model in France today, this does not mean that secularism '*à la française*' is a fixed model. France is

¹⁶ "The Republic is a philosophy before being a regime: it is a Church, a secular Church whose dogma is free thought and whose priest is the teacher." Emile-Auguste Chartier, called Alain's quotation. The current intellectual, the most representative of this tendency, is Henry Pena-Ruiz: *La Laïcité* (Paris: Flammarion, 2003), p. 254. *Histoire de la Laïcité, Genèse d'un idéal* (Paris: Gallimard, 2005). See also Claude Nicolet, *L'idée républicaine en France* (Paris: Gallimard, 1982).

¹⁷ René Rémond, ed. *Histoire de la France religieuse*, Vol. 3: *Du Roi très chrétien à la Laïcité républicaine, XVIIIème-XIXème siècles* (Paris: Seuil, 2004), Troisième Partie, *Une vitalité religieuse toujours forte*. Paul Airiau, *Cent ans de laïcité française. 1905-2005* (Paris: Presses de la Renaissance, 2005); Yves Tripiet, *La laïcité, ses prémices et son évolution depuis 1905 (le cas breton)* (Paris: L'Harmattan, 2003).

¹⁸ J. Battut, C. Join-Lambert, Vand, 1984, *la guerre scolaire a bien eu lieu* (Bruxelles: Desclée de Brower, 1995).

¹⁹ Jean Baubérot, *Vers un nouveau pacte laïque?* (Paris: Seuil, 1990).

‘unanimously’ secular for sure, but this unanimity is recent: it is the sum of accommodation between opposing views and continues to evolve. First, there are at least two forms of secularism in France: the imagined and the legal. The legal, fixed by the constitutional framework, is characterised by the State’s neutrality, a nonreligious legal order, equality before the courts, the prohibition of discrimination, and above all, strong protection for religious freedom.

Freedom to practice any religion is real and more and more ensured because legislation, administrative practice, and judicial doctrine, including institutions such as the Council of State, have helped the concept of secularism evolve from a strongly polarised position on the neutrality of the State and strict separation, toward ensuring more respect for freedom of conscience and worship. Today, legal secularism is finally focused on defining the concept of religious pluralism as a constitutional value that is still legally unclear, and also on reducing the effects of discrimination, which still affects small and new religious minorities.²⁰

It is true that the coming of the secular state in France was not a quiet continuum and corresponds to a long war between two different conceptions of the state and its relations with religion. A first monist conception, in which the state, itself denominational, favours one unique religion of which it is the protector (the former French system) opposes another monist conception, in which the nondenominational state does not favour any religion and, moreover, uses its power to contain religious expression outside its own sphere of influence, replacing it by a strong civil religion (Republican France). The model in both cases is that of the historical, pre-existing state, although Edmund Burke affirms the extreme autonomy of the society of the old French regime. The state in France pre-existed citizenship and the civil order.

Thus, rights and freedoms for citizens are subjected to an order that remains sovereign and limits rights and freedoms under the law, itself strictly delineated. It has been a difficult challenge to pass from a monist state, which has excluded the temporal influence of Catholicism and methodically reduced the influence of this religion on society as a whole, to create a state based on legal principles, subject to the rule of law, and kept distant from the religions professed by its citizens, integrating denominational pluralism as a new constitutional value. This needed the recent debates on religious discrimination towards Muslims – or towards very small and too proselytic religious minorities –²¹ so that, a new consideration for the citizens’ religious diversity – as well as for their spiritual vitality – is now taken into account by the law, without really affecting the form and official philosophy of the French secular state.

But this new consideration is still challenged by an imagined one, which acts like a civil religion and, in any case, which is part of the essential themes of French political debates between Right and Left: the Left stating that secularism means no religion at all in the public space, and the Right saying that secularism means a selective freedom of religion for those religions that are compatible.... French imagined secularism is, in a way, a perpetual building site and the mediocre result of several opposing trends, competing over a correct understanding – and using it to defend a political objective.

For example, in the 1950s, secularism was a concept employed by some of the French Left to ‘defend’ public schools against competition from private Catholic schools. Secularism as a theme fuelled the Schools War, pitting one camp against the other, and the Right did not like this theme one bit. So when, in 1958, the new Constitution declared the French republic a

²⁰ Blandine Chelini-Pont. “L’émérgence normative du pluralisme religieux et ses conséquences sur la laïcité française,” in *Pluralisme et Idéologie*, Actes du colloque LID2MS 2009, Collection Droit et Mutations sociales, PUAM, 2011, pp. 110-136.

²¹ Françoise Gaspard and Fahrad Khosrokhavar, *Le foulard et la République* (Paris: La Découverte, 1995). Claire de Galember, ed., special edition, *Le voile en procès*, in *Droit et Société* 68.1 (2008).

secular republic, the Gaullist fathers of the Constitution were careful not to define the content of this adjective. The Schools War ended with the 5th Republic, and academic freedom, coupled with freedom of conscience, was declared a constitutional right by the Constitutional Council. In exchange for support by the state for Catholic school salaries, Catholic dioceses agreed to take up the mission of teaching as a public service, jointly with the public education system. They also accepted that parents could freely choose to enroll their children, or not, in classes on the Catechism in Catholic schools. This is a very French secular arrangement that has greatly contributed to reconciling Catholics with the secularism of institutions and civil law.

The issue of secularism almost disappeared from the political debates of the 70s and 80s, except as an identifying characteristic of some of the French Left, for whom religion – still understood as ‘Catholic’ – remained the time-honoured enemy of any progress of the *revolutionary people*... The ideals of philosophical emancipation and teaching freedom of thought have remained strong in the education system and have been a weapon for socialist activists in the country until today. But secularism as a reference was no longer the subject of debate or political identification. It was in the late 80s, with the appearance of Muslim veils in public schools, twenty years ago now, that the notion of secularism as a sum of the values of the French Republic resurfaced. In twenty years ‘secularism’ has become the spirit of the French Constitution. It has served as a key word to define the identity of the French citizen.²²

This major shift has two faces that confront one another, like those of the Roman god Janus. The first face is defined by one of our greatest sociologists on religion in France, Jean-Paul Willaime, as a positive shift, because it gave rise to the so-called secularism of recognition of religions, which President Sarkozy’s team defined as *positive secularism*, with a very Christian narrative on the participation of religion in the affairs of the Republic. The two orders are well separated: the temporal from the spiritual, and people have the right to believe anything they want, as long as civil society, as an assembly of all citizens of the Republic, is organised within the framework of a set of common laws with a self-regulating political order *sui generis*.²³ Consensus-based secularism can survive without religion - or live in peace, coexisting alongside religion.

According to Willaime, the French today are much less tense about the fact that religion can be a very important element in people’s lives. They admit that there are some very religious people amongst them; and more than before there is a diversity of beliefs. They also increasingly admit that organised religions play a role in civil society and express their views in social debates, etc.... This greatly benefits the Catholic Church and its presence in the public arena, the charity sector, healthcare, and especially in education.

But to this positive secularism, which can also be seen in the development of jurisprudence,²⁴ particularly through the history of many case laws concerning the Jehovah

²² Jean Bauberot, *Histoire de la Laïcité en France* (Paris : Presses universitaires de France, 2011).

²³ Jean-Paul Willaime, “Pour une sociologie transnationale de la Laïcité,” in *Archives des Sciences Sociales des Religions* (June 2009): pp. 201-216.

²⁴ Latest to date, five administrative case laws of the State Council were issued in July 2011, making changes in the relations between local governments and cults. In all cases, the Council agreed with the local authorities, demonstrating a rather liberal view of the 1905 law. Municipalities “may fund projects related to buildings or cult practices,” despite Article 2 of the 1905 Act, provided they comply with the neutrality of religion and be of “local public interest,” be it cultural, economic, or health-related. For example, the Basilica of Fourvière in Lyon is a religious building but it is also the first tourist site of the Rhône-Alpes region; the mayor of Lyon can therefore install a lift. The church organ, financed by the community of Trélazé, can also be used for music lessons or concerts open to the public. As for the construction of a sheep slaughter house in the city of Le Mans, mainly for Muslims, this is justified for reasons of “safety and public health.” The State Council also validated an agreement for a long term lease (99 years and a symbolic one euro per year) between the Mayor of Montreuil and a religious association, for the construction of a mosque. Finally, the State Council considered that a community – in this case the city of Montpellier – shall “allow the use of one of its premises for the practice of a

Witnesses, there is, however, a negative secularist reaction that continues to resurface. Negative secularism means not accepting being called into question by ‘newcomers,’ or those who lack discretion, and who, in a sense, ‘attack’ the tacit agreement imposed by secularism – i.e., a pact of religious discretion – when people ‘mix’ with others in the street, at school, or in government offices, etc.. The visibility of religion causes the reaction of ‘secularism in danger,’ like the revolutionary model of the ‘Fatherland in danger.’ In fact, those most affected by this secular reaction are the Muslims, since the Catholics in France have been deeply secularised since the 70s, and went practically unnoticed for twenty years.

France is populated by some 66 million people, with three key characteristics that merge together: a long-standing, firmly rooted population with very numerous and diverse local traditions and lifestyles; a long-established urban population, as a consequence of the different industrial revolutions; and a clearly defined melting-pot population, constantly being renewed since the 19th century. A country of strong immigration, as is the United States, France today has a total of four million foreigners, a permanent number made up by the difference between the newcomers and long-standing immigrants who have now become or are becoming new citizens.

Moreover, France today receives millions of immigrants, but more with long-standing or recent European roots (Italy, Belgium, Poland, Spain, Portugal, Romania, Greece, Hungary, Lithuania); recent North African roots (Algeria, Morocco, Tunisia); continental African roots (Mali, Chad, Senegal, Niger, Burkina Faso, Ivory Coast, Togo, Benin, Zaire, Congo, Rwanda, the Comoros, Madagascar), and Asian roots (Vietnam, China, Sri Lanka).

This extreme diversity is due to a number of different factors: the (past) attractiveness of being one of the major countries of the industrial revolutions in Europe; the demographic shortfall caused by the two World Wars; the extraordinary post-war economic growth; and the vast wave of immigration that followed the French Empire’s decay. The existence of a French speaking area as an imperial heritage still favours France as a destination in the current process of African immigration.

If, today, economic immigration now affects all countries in Europe, for a long time in the past, France, Germany, and the United Kingdom were the only countries affected. Since the 70s, citizenship policies in France (by request, birth, or marriage) favoured a rapid extension of citizenship to economic immigrants with their families. The goal of this policy was to ‘assimilate’ them faster. This term means that once a French citizen, former immigrants have to adopt a tacit, unwritten agreement involving specific behaviour as to religious beliefs: and acceptance to be discreet about this in the public arena and social relations.

This model, equally inherited by complex French history on its controversial path towards political modernity, was contested in the 1980s. Two phenomena developed that, step by step, changed well-founded certainties and habits. The first one was the denunciation of the strong discrimination existing towards immigrants at work, in housing queues, education, salary levels, and above all, in terms of social respect. The second phenomenon was the protest against French secularity, as a social practice of civic discretion in the public sphere. This practice began to be denounced as an insidious form of discrimination, as ‘forcing’ everyone to keep his religious association to ‘private’ space would in fact favour contempt of the new religions.

In the 1990s, hostility toward Muslim visibility was, in a way, overshadowed by the hostility toward new religious movements, all lumped together, like the dangerous totalitarian cult movements that were contrary to freedom of thought. A strong anti-cult policy developed

religion” provided that at all times “financial conditions exclude any donations.” Furthermore, a community shall not prohibit the use of any of its premises for religious purposes....

in the country during those years, however public opinion eventually lost interest. This is no longer a success today. We are once again in the presence of the development of *Secularism on the defensive*, in which Muslims are the attackers. Indeed, there are concerns about this turn of events. These events are not only French; they affect the entire European continent.

But, getting back to the first point: if, in the rest of Europe, secularism is pointed to as the vilified vector of multi-culturalism, the atheism of the welfare State, a de-Christianisation orchestrated by elite liberals with no conscience, and the direct cause of the Islamisation of the continent, in France, in fact the exact opposite is true. Secularism is put forward in France as a protective shield against these same phenomena, especially against Islamisation and the destruction of French culture. Secularism in France is now used as an argument to respond to the awakening of the same nationalist identity that has taken hold in parts of Europe. Faced with the global economic crisis; increasing immigration, particularly in countries that have never known this phenomenon, such as Scandinavia; and a feeling of loss of status, a dangerous anger is mounting from the depths of the old world.

Thus, the originality of French secularism today is that it is promoted by certain groups united against 'Islamisation,' when this same secularism is denounced by many in Europe as one of the main causes of Islamisation. In both cases, 'Muslims' become the metaphysical enemy. And having lived through the historical experience, we Europeans know that a portrait of the metaphysical enemy against the backdrop of the economic crisis does not lead to political appeasement.²⁵ Let us give just two very symptomatic examples of what is going on: in France, the National Front party has played the role of acting as the denouncer of the 'Muslim invasion' as a result of uncontrolled immigration. But it is now joined in this denunciation by some of the Gaullist electorate, and by the formation of a sub-group in the Gaullist majority party called the *People's Right*, both of which are pushing for a stop to immigration.

A significant group of secular activists, normally more left wing, are also supporting this portrait of 'Muslims' that undermines the historical values of France. The debate in 2011 sparked by Muslim 'squatters' praying on the sidewalks of certain cities in France (due partly to the lack of space in the Mosques and partly to the attractiveness for 'religious traders' of uncontrolled cash gifts), such as Paris, Lyon, and Marseille, is a striking example of the way the media feeds on the political statements of these groups that ignite heated debates. At the same time, we are witnessing a rise in popularity of right and left wing associations that define themselves as 'Republican resistance' organisations, led by *Le Bloc identitaire* (the Identity Block) (rightist) born in Nice, and the *Riposte laïque* (Secular Response) (leftist) born in Paris, whose websites are particularly popular.²⁶

Other groups are also visited on the net, such as *Bivouac* or *Résistance républicaine*. These new groups organised a public Republican aperitif (sausages & wine) on 18th June 2010 in Paris – the day General de Gaulle called for the Resistance against Nazi victory – and again on the 18th of June 2011. They also organised the same type of aperitif on the 4th of September 2010, commemorating the 140th birthday of the 3rd French Republic. These new 'Republican resistance' groups have recently come up with a slogan: *neither Sharia nor Burkq in the Republic!* Each time, the media has extensively covered these events.

Conclusion:

Without exaggerating the issue, tensions are mounting in Europe, and the thresholds of tolerance are giving way to the thresholds of saturation. In this context, paradoxically, the legislative strictness in France on the issue of the Burka being forbidden in public, as well as

²⁵ Jean Baubérot, *La Laïcité falsifiée* (Paris: La Découverte, 2012).

²⁶ <http://www.bloc-identitaire.com/>, <http://ripostelaique.com/>

negotiations on the way with Muslim associations to avoid praying in the streets, can be considered as prevention rather than stigmatisation. The development of the French secularist narrative over the past twenty years has vacillated between openness to religious pluralism and a closed nationalist identity, and in this balancing act has shifted today in a reactionary direction, within the image of the political and cultural mood of the old continent.