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# The Secular State and Religious Tolerance. Comparing French, American and Italian Legal and Political Traditions

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The present paper is based on an earlier conference given at the *Berkeley Center for the Study of Religion* on September 13, 2021. It has been revised and updated for the Observatoire International du Religieux.

## Defining secularism

Let me start with a simple definition of *laïcité*. *Laïcité* is often translated as secularism. But it is not exactly the same thing. The United States is a secular republic, but at the same time a deeply religious society. France is a secular republic in a deeply non-religious society which used to be dominated by the Catholic Church. The most visible religions in today's France are the religion of newly arrived immigrants : evangelicals from Subsaharan Africa and Muslims from North Africa and Subsaharan Africa. They are often criticized because they are "visible religions". They are not discreet, they are openly proselytizing, which is not the way of the French Catholic church today.

Is state secularism compatible with a deeply religious society? Is it compatible with religious tolerance? Is it conducive to religious tolerance? It all depends on the historical context. In the United States, the secular republic was not built against religion; it only opposed established religions, such as Anglican Church in Virginia or the Dutch Reform Church in the New Netherland. In France *laïcité* was developed against the Catholic Church — a church which until the early 1900s opposed the very notion of a secular republic and openly supported a return to the monarchy. A church also which did not accept the notion of freedom of consciousness. And yet, despite those differences, there are similarities between French and American secularisms: they are both based on a key principle —the separation of Church and State. This was well understood by one of the architects of the 1905 French law on the Separation of church and state, Ferdinand Buisson, who invented the term "laïcité" and applied it to the secular state. A secular or "laïque" State is "a

state neutral with regard to all forms of worship, independent of all clergies, free from any theological views" (1887)<sup>[1]</sup>. This abstract definition works pretty well for both the French and the US secular states.

Today, the debate about the secular state concerns the extent to which religious symbols can be present in the public square. Should they be tolerated? Should they be banned or restricted? Do religious symbols threaten the neutrality of the secular state?

Let me pursue the comparison between France and the United States with a quick reminder of the similarities between the French and the American secular states. Compare Article VI of the U.S. Constitution: "no religious test shall ever be required as a qualification to any office... under the US" with Article 6 of the French Declaration of the Rights of Man: "all citizens, being equal in the eyes of the law, are equally eligible to all... public positions"

Or again compare the second paragraph of the First Amendment: Congress shall make no law "prohibiting the free exercise" of religion with France's first article of the Constitution of the Fifth Republic: "France shall respect all beliefs"... or again art. 10 of the French Declaration of the Rights of Man: "No one shall be troubled [*inquiété*] for his opinions, including his religious views, provided their manifestation does not disturb the public order established by law."

In many ways, as argued by Zoller, a French constitutional scholar: "France is the daughter of Jefferson" as "the US is the heir of Voltaire"<sup>[2]</sup>. A surprising statement which needs further explanation:

Is France the daughter of Jefferson? Here a possible answer: it has to do with the French elites admiration for Jefferson's *Bill for Establishing Religious Freedom*, written in 1779 and only adopted by the Virginia General Assembly in 1786, thanks to the active support of Madison. In this bill, Jefferson denounced all attempts by a legislature to "compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhors". This practice is "sinful and tyrannical" and Jefferson famously added: "our civil rights have no dependence on our religious opinions, any more than our opinions in physics and geometry"<sup>[3]</sup>.

Later, in a letter to the Danbury Baptist Association, Jefferson will explain his understanding of the First Amendment and insist that it created a great "wall of separation between church and state".

Is the United States the heir of Voltaire? Here the evidence is less direct. But it is clear that the founding fathers and Madison in particular were

readers of Voltaire and other enlightenment thinkers like Montesquieu, Diderot, Volnay, Dêmeunier. Madison, in his correspondence, often quoted Voltaire's famous statement about the dangers of a religious tyranny derived from a religious establishment:

If there were only one religion in England, there would be danger of despotism

if there were two religions, they would cut each other's throats, but there are thirty and they live in peace and happiness<sup>[4]</sup>.

You can find an echo of this reasoning in Federalist #10 where Madison compares religious sects with political factions (a faction meant a political party in the XVIII<sup>th</sup> century and a sect referred to a church):

A religious sect, may degenerate into a political faction [i.e. a dominant or tyrannical faction] in a part of the confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source.

In sum: the larger the union, the larger the number of sects, and the least likely the risk of religious tyranny, the same reasoning applying to political parties.

Let us now consider the present. The real controversy, today, is about the presence of religious objects in the public square. This debate is really a debate about the nature of secularism. Secularism, as it functions in France and the United States can be both inclusive and exclusive. It is inclusive if it permits the presence of religious symbols in the public sphere on the grounds that those symbols are "neutral", and in fact not really religious. It is exclusive if it prohibits those symbols on the grounds that they challenge the core values of the society in which they are displayed. Hence the two parts of my talk: 1) Tolerant Secularism, 2) Intolerant Secularism.

### **I-Tolerant Secularism.**

French *laïcité* in the American media is often portrayed in negative terms, as hostile to religion in many of its manifestations. And yet, this hostility, quite real in the case of the prohibition of Muslims veils (the hijab, the niqab, the burka, the burquini)<sup>[5]</sup>, is more tolerant of other religious symbols, such as nativity scenes in the public square. Let me start with the latter example.

The 1905 French law separating church and state prohibits the display or the construction of religious symbols on all public lands and in all public

buildings (article 28 of the law). But it preserves already existing religious structures and makes an exception for graveyards, religious ceremonies and religious buildings.

The presence of nativity scenes in French cities and villages remains pretty controversial and administrative tribunals have often, in the past, prohibited nativity scenes. But there has been a recent change, suggesting that French authorities are much more tolerant of religion, even though the outcome of this change can be contradictory. Part of the problem lies with the meaning of nativity scenes. It could have several signifiers: 1) a strictly religious one: the birth of Christ and the foundation of Christianity; 2) a predominantly cultural meaning: a crèche is a work of art, an artistic display of figurines built by local artisans. In that case, the crèche is much more than religious: it is a symbol of culture and tradition.

In principle, if one follows the law of 1905, no exception is tolerated if the crèche appears as what it is: a religious symbol and implicitly an act of religious proselytizing. But this narrow reading of the "true" meaning of a nativity scene is slowly changing, as demonstrated by the recent case law of the French Council of State (*Conseil d'Etat* or France's top administrative court). In a 2016 decision concerning the display of a crèche in the hallway of a public building, the General Council of the Vendée, the Council of State introduced a new argument in favor of the crèche, in pretending that the the display of the birth of Christ was, in fact, a neutral event. It did not endorse a particular religion —Christianity— it simply acknowledged its existence and placed it in an ancient tradition, whose meaning was more cultural than religious and which included strong secular elements: a big Xmas tree and the distribution of gifts to displaced children and children of municipal employees. The crèche, in that particular context, had exhausted its religious meaning, it was part of an annual holiday (*fête de fin d'année*), open to all, irrespective of faith and social background<sup>[6]</sup>.

On the other hand, another decision, rendered the same day by the Council of State invalidated the construction of a crèche in the hallway of the city of Melun, on the grounds that this was a new initiative, which did not reflect an old local tradition and did not refer to past cultural events or "special circumstances" justifying the display.

What are we to make of this contradiction? Gwénaële Calvès, a French professor of law, has insisted that the first decision is really the important one, for it signals a shift of direction, a fundamental change in the French secular tradition: it reveals the emergence of a new "neutrality doctrine", according to which religious symbols can be transformed into symbols of

tradition, identity and "living together", irrespective of their religious content. In short, the new "neutrality doctrine" secularizes the religious, it makes it an object of memory, the commemoration of a Christian past, in a society which is today profoundly de-christianized. In any case, the religious aspect of the nativity scene is only *acknowledged* as part of a old, cultural tradition. In no way is it *endorsed* by public authorities<sup>[7]</sup>. This suggests the rise of a new open "laïcité" which two French sociologists have recently defined as a "Laïcité of recognition"<sup>[8]</sup>.

Let us now consider the American example. There is no federal law that prohibits religious monuments in the public square. But the Establishment Clause imposes some limitations. In a key Supreme Court decision — *Lynch v. Donnelly*, 1984 – concerning the setting of a crèche in a shopping center of the city of Pawtucket, the court validated the nativity scene. The argument, introduced by Justice O'Connor, was the following: the crèche was indeed a symbol of Christianity, and this was not diminished by the presence of secular symbols: a reindeer, a clown, an elephant, a big teddy bear. "The crèche was not neutralized by the setting". But it was much more than a Christian event. It celebrated a major event, a public holiday, and it was surrounded by "very strong secular components", analogous to a museum setting, where religious paintings can be displayed, but cannot be understood as conveying a message of endorsement of religion. O'Connor was thus redefining the concept of government neutrality in insisting that the only type of endorsement that is not acceptable is that "which sends a message to [non Christians] that they are outsiders, not full members of the political community"<sup>[9]</sup>. A mild endorsement, attenuated by secular elements and a larger traditional holiday context was in the end, perfectly acceptable.

### ***Secularizing the cross? The Italian example***

Let me now consider a third example of transformed secularism/laïcité, which pushes the boundaries of religious tolerance to the limit, in a most interesting way. It has to do with the presence of crucifixes in public classrooms in Italy. Italy, despite the presence of the Vatican (an independent state) is a secular country, which like France recognizes the concept of laïcité (*laicità* in Italian). A law voted in May 1985 disestablished the Catholic church which is no longer the "state religion", and three years later, the Italian constitutional court declared that *laicità* is a constitutional principle.

Was the presence of the cross compatible with the European Convention of Human Rights and in particular its article 9 on "Freedom of Thought, Conscience and Religion"? The case was decided by the European Court

of Human Rights, in *Lautsi v. Italy*, Grand Chamber, March 18, 2011<sup>[10]</sup>. [the plaintiffs were Ms Lautsi and her two children...]

The key question was: Should the crucifixes remain in the classrooms? What is the true meaning of the cross? Is it primarily a symbol of christianity? Or is it much more? For the government, which followed the argument of the highest Italian administrative Court, the *Consiglio di Stato*, the cross no longer was the symbol of a triumphant christianity. It was a "passive symbol" which was fully compatible with the Italian principle of secularism. *Laicità*, in the Italian sense of the term, was not equivalent to a totally neutral state, indifferent to all religions. It was a principle that defended "religious liberty" within a "confessional and cultural" framework that was pluralistic. Pluralism therefore was the key principle (#23). *Laicità* could only be understood as a modern expression of an old Western Christian heritage, which transcended its religious nature in a rather astonishing way:

Now, it is obvious that in Italy the crucifix is capable of expressing, symbolically of course, but appropriately, the religious origin of those values – tolerance, mutual respect, valorisation of the person, affirmation of one's rights, (...) human solidarity and the refusal of any form of discrimination – which characterise Italian civilization. (#16)<sup>[11]</sup>

Hence this remarkable tour de force : the cross means nothing, it is emptied of its specific theological content; but it means everything: it is the symbol of a modern secularized Italian civilization, it affirms all the human rights conquered by the Italians, after years of political struggle.

But the important point is the inclusiveness of the Italian system of public education: What is the likely "effect" or the "impact" of the crucifix on the students and their professors? The court claims that it has in fact no effect: the cross is genuinely "passive" in the Italian public schools, because it is not accompanied by a compulsory teaching of religion, or any form of proselytizing. The school remains open to all religions. Students, for instance, are allowed to wear islamic headscarves and non-Christian religious events such as the beginning and the end of Ramadan can be celebrated in the schools. Non-believers are also fully respected... (#74). In the end, the Court concluded, the presence of crucifixes in the classroom does not violate the "right of education" as defined by [Protocol 1, art. 2 of] the European Convention of Human Rights<sup>[12]</sup>.

The three examples examined so far suggest that secular governments are quite tolerant of religious symbols in the public sphere, provided that these symbols are *not* "strongly religious", either because they've lost

their dogmatic (or theological) contents, or because they are mixed with other non-Christian religious expressions. The key concept here is religious pluralism: every belief has its place, including non-beliefs, and every religion is treated with respect, even though an older, formerly dominant religion may maintain a higher visibility, in the name of tradition.

## **II-Intolerant Secularism**

I'd like now to consider several examples of "intolerant secularism", which gives little or even no place to religious symbols in the public square for reasons that are essentially political. This intolerance almost exclusively targets the religion of newly arrived immigrants, namely Muslims from Turkey and North Africa. What's interesting about it that it is never "frontal", never openly anti-religious. It touches, instead, questions of identity and assimilation. It deals with social values and mobilizes a rhetoric of national consensus, based on good manners, dignity, social tradition, and uncritical acceptance of what Rousseau would have called "la volonté générale" and which is best described today, in France and in Belgium as "the art of living together" (*le vivre ensemble*).

The problem with this emphasis on national consensus is that it does not favor inclusiveness and pluralism. A good case in point is the ban on Muslim Minarets in Switzerland. The central argument of supporters of the ban, besides the fact that minarets do not fit with the traditional picture of a Swiss village with its little church, is that a minaret is not an essential element of the Muslim faith, as long as mosques are allowed to be built. The ban, it is alleged, does not violate "liberal values of religious non-establishment and neutrality". But, in fact, the effect of the ban on the Muslim community can be quite severe, as argued by French philosopher, Cécile Laborde: "a public ban on minarets unambiguously sends a message of exclusion to Muslims". It places Muslims "outside the borders of the imagined Swiss national community<sup>13</sup>", it makes them realize that they are not full members of the Swiss community. In other words it stigmatizes them.

The same reasoning can be applied to the French (and Belgian and Swiss) bans on the the full face veil, the niqab (and the burqa). Veiling one's face is not a requirement of the faith. It does not belong to the five pillars (the required practices) of Islam; it is not even openly mentioned in the Quran<sup>14</sup>. What are then the arguments used to justify the ban? In passing a law banning the burka and the niqab, the full facial veil, the French government did not invoke this religious question. It only referred to secular values, and in particular, the "dignity of women" on the grounds that this medieval garb was not dignified, because it scared other (non-



Muslim) peoples in the street and also constituted an attempt to proselytize moderate or non-practicing Muslims. The ban, it was said, violated the equality of men and women, since only women would wear the veil and it was perhaps imposed by men on unwilling women. And, above all, the full face veil was denounced as a threat to the French cultural norm of "fraternity". The veil prevented open, face to face relationship and the ideal of "transparent communication" within society, an ideal which was supposed to be an integral part of the "art of vivre ensemble", the art of living together, developed after years of religious conflicts and civil wars.

In fact, the main reason to ban the full facial veil was political: conservatives didn't like it, it signaled in their mind the rise of radical islam and the new immigrants' refusal to assimilate. On the left, feminists were incensed at the medieval nature of the niqab, often described as a "jail for women", a "walking cloister", a signal of women's inferiority<sup>[15]</sup>. But there was a key legal and constitutional problem: Secularism can be strict and exacting, but it cannot reject out of hand a religious practice which, like all religious practices is inscribed in the French constitutional order, namely to right to express one's religion in public, and the free exercise of religion<sup>[16]</sup>.

Faced with this difficulty, French law makers chose to "secularize the ban", in a way that appeared "neutral". The ban would have nothing to do with religion. It would only target all forms of face covering from the public space. The 2010 law "banning face-covering in the public space" and its "circular" to apply the law (*circulaire d'application*) provided a long list of acceptable face-covering concerning nurses, traditional catholic hoods in religious marches, painters, dentists, fencers, motorcycle riders, carnivals, etc.<sup>[17]</sup> In fact, if you consider the list of permitted coverings, *only* Muslim women wearing a burqa or a nikab were banned from the streets.

The ban on the full-face veil innovated in providing a new, unprecedented definition of the "public space", which did not just involve public buildings, schools, theaters, city halls, museums, but also a public space that had never been before strictly regulated: the streets, the parks, the gardens, the beaches. Veiled women were banned from the entire public space. They could be fined for violation of the ban and even arrested if they refused to comply. The ban was controversial in France, but the highest French Court, the Constitutional Council declared that the ban did not violate the French Constitution. The ban was also approved by the highest European court, the European Court of Human Rights. In this case, *SAS v. France*, a young French plaintiff claimed that the ban on the niqab, which

she wore “depending on her mood”, violated the European Convention on Human Rights. The French government objected on four grounds: the safety and security of the public, the protection of equality between the sexes, the respect of human dignity and the respect for the notion of “living together”. The European Court, in its majority opinion, only retained the last condition, “the fundamental requirements of living together”, as a valid “social choice” which a country such as France could impose on its citizens. But it never explained what was truly meant by “living together”. It gave the French Government a large margin of appreciation to define “the requirements of living together”.

Critics of the decision, and that included two dissenting judges, a German and a Swedish judge, denounced its majoritarian bias, the fact that it stigmatized a small religious community whose members didn't threaten anyone and who sincerely believed that the full-face veil was important to them, even though it was not necessarily a religious obligation. The decision, according to the dissenting judges was a clear violation of the principle of tolerance; it demonstrated “a selective pluralism and restricted tolerance” and they concluded that one does not “remove the cause of tension by eliminating pluralism”, but in making sure that “competing groups tolerate each other.”<sup>[18]</sup> In other words, true tolerance consists in protecting a small, vulnerable and unpopular minority against the restrictions imposed by the majority.

For complex historical reasons, the French secular state is incapable of practicing such a true tolerance. This, in large part, could be traced back to the Jacobin, centralized tradition – first developed by Louis XIV and perfected by the French Revolution. Dissent, whether it is cultural, religious or political has never been easily accepted in France . Multiculturalism, today, is almost an insult, the sign of a willingness to refuse the French identity, a dangerous communitarian impulse, the signal of a possible dissolution of the state, an impulse for “separatism”. For this purpose, the French Parliament just passed a “Law reinforcing Respect for the Principles of the Republic” (*Loi confortant le respect des principes de la République*, August 24, 2021). This law expanded the scope of *laïcité* and targeted all religions and not just Islam. But “radical Islam” was clearly the main target. In particular, the law imposed new forms of control for the appointment of religious ministers and new rules regarding the acceptance of foreign funding. It also prohibited speeches that “provoke hatred or violence against persons or group of persons or tend to encourage such hatred and violence” – the ultimate sanction being the temporary closure of the mosque (or church or temple) where the hate speech has occurred. In addition, it required that religious associations sign

a “charter of republican values” in order to be approved by the government and to apply for public funding<sup>[19]</sup>.

One can find comparable cases of secular intolerance in the United States, but they are relatively rare and they may have been better justified. They concerned, for instance, a ban on polygamy (*Reynolds v. United States*, 1878), a ban on the use of peyote in religious ceremonies (*Employment Division v. Smith*, 1990), a ban on wearing of a Yarmulke in the US Air Force (*Goldman v. Weinberger*, 1986). But there is no ban on Muslim religious dress. Islamic veils are easily accepted in schools and in public buildings such as airports, city halls or even the US Congress. The most recent and the most serious prohibition imposed on a religious minority is president Trump's 2017 proclamation which banned the entry into the United States of residents from predominantly Muslim countries<sup>[20]</sup>. Critics of the decision invoked several constitutional amendments, starting with the Establishment clause of the First Amendment. The “Muslim ban”, as it was called, stigmatized a particular religious minority. It violated secular state neutrality. But the Supreme Court ruled otherwise in a recent 5/4 decision, *Trump v. Hawaii* (June 2018). For Chief Justice Roberts (delivering the opinion of the court), the president's proclamation did not signal a systematic hostility to Islam. It only targeted countries representing 8% of the world's Muslim population<sup>[21]</sup>. The ban did not violate the Establishment Clause, for its target wasn't religion per se, but something else, justifying a important government interest, namely, national security.

As in the European case *SAS v. France*, just mentioned, it is worth considering the dissenting opinions in *Trump v. Hawaii*. These two distinct dissents are in fact comparable: they both denounce the hypocrisy, the false neutrality and the majoritarian bias of the secular state in France as in the United States. In this context, Justice Sotomayor's dissent (which was joined by Justice Ginsburg) is worth quoting:

The United States of America is a Nation built upon the promise of religious liberty. Our Founders honored that core promise by embedding the principle of religious neutrality in the First Amendment. The Court's decision today fails to safeguard that fundamental principle. It leaves undisturbed a policy first advertised as a “total and complete shutdown of Muslims entering the United States” because the policy now masquerades behind a façade of national-security concerns.

In [Sarkozy's and] Macron's France as in Trump's America, we are facing highly questionable legal decisions which hide an unpleasant reality: the weaponization of religion for political purpose, at a time when Islam is

denounced as a dangerous threat to Western values. And by the way, the rise of the Covid pandemic, and the requirements of masking for all, [or for the non-vaccinated] made a mockery of the “open face social interaction model” that was supposed to be at the core of the French art of *vivre ensemble*. Masking one's face is unpleasant, for sure, but it has not destroyed social interaction...

In the United States, Sotomayor's and Ginsburg's joint dissent in *Trump v. Hawaii* pointed to a new definition of modern tolerance: tolerance is not just the full acceptance of minority faiths in a pluralistic society, according to the principle of “religious neutrality”. It also involves the principle of hospitality: a tolerant society accepts foreign visitors, irrespective of their faith and national origin. It may restrict the duration of their stay (with visas for instance), or define special conditions for family reunification and political asylum, but it cannot prohibit their entry without compelling reasons.

### **A word of conclusion**

The Secular State, at the end of the XX<sup>th</sup> century or the beginning of the XXI<sup>st</sup> century did not prohibit the presence of religious symbols in the public square. It regulated their presence according to well established principles of state neutrality, tolerance and religious pluralism. But the rise of nationalist or populist ideologies, in France, the United States, Belgium, Switzerland... had the unfortunate consequence of purging the public square of certain religious symbols (or foreign visitors in Trump's America) considered too “foreign” or too “radical” to be compatible with the dominant norms of old Western societies. These ideologies introduced a majoritarian bias, —Tocqueville would have said a “tyranny of the majority” i.e. a perversion of modern tolerance — stigmatizing, without openly saying so, religious minorities and in particular Muslims. But one should never forget that Muslims are not the first immigrants considered “too foreign” to be assimilated into American society. Irish, Chinese, Italians, Japanese, Jews, Mexicans and other groups were not always welcome in the United States. But that didn't prevent them from being successfully integrated in a remarkably inclusive “We the People”. Sometimes, it took a long time for non-mainstream religious groups to be tolerated, let alone welcome and respected for their positive contribution to society. The treatment of Afghan (and today Ukrainian) refugees in this country and in Europe will offer yet another test of our commitment to the values of tolerance and pluralism.

# Notes

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## Notes

- ↑1 Ferdinand Buisson, *Dictionnaire de Pédagogie et d'instruction primaire*, Paris: 1887 (Laffont, 2017, reprint with a preface by Pierre Nora).
- ↑2 Elisabeth Zoller, “Laïcité in the United States”, *Indiana Journal of Global Legal Studies*, Summer 2006, p. 564.
- ↑3 Denis Lacorne, *The Limits of Tolerance. Enlightenment Values and Religious Fanaticism*, New York: Columbia University Press, 2<sup>nd</sup> paperback edition, 2023.
- ↑4 Voltaire, “Sixth Letter on the Presbyterians”, in *Philosophical Letters; or, Letters Regarding the English Nation* [1734], (John Leigh, ed.), Indianapolis: Hackett, 2007, p. 20.
- ↑5 The niqab covers the whole face, but not the eyes. The burqa covers the entire face as well as the whole body.
- ↑6 A crèche presented like a museum exhibition, providing explicit explanations for the figurines and the artisans who created them is also perfectly acceptable. See Calvès, Gwénaële Calvès, « Conseil d’État, assemblée, 9 nov. 2016... » in Perroud et al., *Les Grands Arrêts Politiques de la Jurisprudence Administrative*, LGDJ, 2019, citing a decision of the Tribunal Administratif de Lyon, nov. 22, 1918, p. 561.
- ↑7 Gwénaële Calvès, *ibid.*
- ↑8 Jean-Paul Willaime and Philippe Portier, *La religion dans la France contemporaine*, PUF, 2021, p. 28, 218-219.
- ↑9 Denis Lacorne, « Breaching the Wall of Separation » in Jean Cohen and Cécile Laborde, eds., *Religion, Secularism and Constitutional Democracy*, New York, Columbia UP, 2016.
- ↑10 For a detailed analysis of this case, see, Laurence Burgorgue-Larsen, “La laïcité dans la jurisprudence de la Cour européenne des des droits de l’homme », *Justice et Cassation*, 2019. On the political controversies raised by Lautsi I (Nov. 3, 2009) and Lautsi II (March 18, 2011), see Christian Joppke, *The Secular State under Siege*, Cambridge: Polity, 2015.
- ↑11 Lautsi II, *Case of Lautsi and others v. Italy*, Grand Chamber, citing the judgment of the the Consiglio di Stato (13 April 2006).
- ↑12 This protocol defines the right to education in the following way: “No person shall be denied a right to an education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching is in conformity with their own religious and philosophical convictions
- ↑13 I closely follow here Laborde’s reasoning in Cécile Laborde, *Liberalism’s Religion*, Harvard : Harvard Univeristy Press, pp. 138-139.
- ↑14 Cécile Laborde, *ibid.*, p. 223.
- ↑15 Denis Lacorne, *The Limits of Tolerance*, op. cit., p. 177.

- ↑16 Article 10 of the Declaration of the Rights of Man: “No one shall be disturbed [...] for his/her religious views, provided their **manifestation** does not disturb the public order.” Article 1 of the Fifth Republic Constitution: “France is an indivisible, secular, democratic and social Republic. It ensures the equality of all citizens before the law, without distinction of origin, race or religion. **It respects all beliefs** ».
- ↑17 See Ministère de l’Intérieur, “Circulaire du 31 mars 2011 relative à la mise en oeuvre de la loi n° 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l’espace public », in *Laïcité et liberté religieuse, Recueil de textes et de jurisprudence*, Paris: Éditions des Journaux Officiels, octobre 2011, pp. 390-392.
- ↑18 Joint dissident opinion of judge Angelika Nussberger (Germany) and Helena Jäderblom (Sweden), *S.A.S. v. France*, ECHR, July 1, 2014, cited in Denis Lacorne, *The Limits of tolerance*, p. 186. See also L. Burgorgue-Larsen, “La laïcité dans la jurisprudence de la Cour Européenne des Droits de l’Homme», *Justice et Cassation*, 2019, *op. cit.*, pp. 20-22.
- ↑19 Noemie Bisserbe and Matthews Dalton, “France passes new bill to tighten control of mosques”, *Wall Street Journal*, July 23, 2021 and more generally, Gwénaële Calvès, *La Laïcité*, Paris, La Découverte, coll. Repères, 2022, pp. 38-43, 104-105.
- ↑20 The September 24, 2017 proclamation replaced and expanded two earlier executive orders, EO 13769, on January 27, 2017 and EO 13780 on March 6, 2017. See *Trump v. Hawaii*, n° 17-965, 585, U.S. — (2018).
- ↑21 The initial ban concerned citizens of Iran, Iraq, Libya, Somalia, Syria, Sudan and Yemen for a 90 day period, regardless of their visa status.

#### **Pour citer ce document :**

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