



RECODE

WORKING PAPER SERIES

Online Working Paper No. 19 (2013)

From Law to Narratives
Unveiling Contemporary French
Secularism

Valérie Amiraux and David Koussens

This paper can be downloaded without charge from:
<http://www.recode.info>

ISSN 2242-3559

RECODE – Responding to Complex Diversity in Europe and Canada

ONLINE WORKING PAPER SERIES

RECODE, a research networking programme financed through the European Science Foundation (ESF), is intended to explore the extent to which the processes of transnationalisation, migration, religious mobilisation and cultural differentiation entail a new configuration of social conflict in post-industrial societies - a possible new constellation labelled *complex diversity*.

RECODE brings together scholars from across Europe and Canada in a series of scientific activities. More information about the programme and the working papers series is available via the RECODE websites:

www.recode.fi
www.recode.info
www.esf.org/recode

Series Editor: Peter A. Kraus

Section 3, Workshop 1:
The Public Management of Religion: from State Building to New Forms of Minority Mobilization

Section 3, Workshop 1:
The Public Management of Religion: From State Building to New Forms of Minorities' Mobilization

Title: From Law to Narratives. Unveiling Contemporary French Secularism

Authors: Valérie Amiraux and David Koussens
Working Paper No. 19
Publication Date of this Version: November 2013
Webpage: <http://www.recode.fi/publications>
ESF Webpage: <http://www.esf.org/recode>

© RECODE, 2013
Augsburg, Germany
<http://www.recode.info>

© 2013 by Valérie Amiraux and David Koussens
All rights reserved.
Short sections of text, not to exceed two paragraphs, may be quoted without explicit permission, provided that full credit is given to the source.

The views expressed in this paper do not necessarily reflect those of the RECODE Research Networking Programme or the European Science Foundation.

Valérie Amiraux
University of Montreal
valerie.amiraux@umontreal.ca

David Koussens
University of Sherbrooke
David.Koussens@usherbrooke.ca

ISSN 2242-3559



Standing Committee for the Social Sciences (SCSS)
Standing Committee for the Humanities (SCH)

From Law to Narratives: Unveiling Contemporary French Secularism

Valérie Amiraux, University of Montreal

Valérie Amiraux is a Full Professor in the Department of Sociology at the University of Montreal and Canada Research Chair in Religious Pluralism and Ethnicity. She obtained degrees in history (BA and MA at the Sorbonne) and in Arabic (both classical and Egyptian at INALCO), and then pursued a PhD in political science at the *Institut d'Etudes Politiques* in Paris (1992-1997). She had subsequent appointments as Jean Monnet Fellow at the European University Institute (1997-1999) and as a Research Fellow and Scientific co-ordinator of the Mediterranean Programme of the Robert Schuman Centre (1999-2000). She has published extensively on religious minorities and discrimination in the European Union. She is currently working on the relations between religious pluralism and radicalisation.

David Koussens, University of Sherbrooke

David Koussens is an Assistant professor at the Department of Religious Studies of the University of Sherbrooke (Canada) where he holds the Research Chair on Religions in Advanced Modernity. He was previously a Max Weber Fellow at the European University Institute (2010-2011) and a Postdoctoral Fellow at the *Centre de recherche en éthique* at the University of Montreal. He has also done research as a Visiting Scholar at the *Groupe-Sociétés-Religions-Laïcités/CNRS* (2008), at the London School of Economics (2011), at the Kadish Center for Morality, Law and Public Affairs, University of California, Berkeley (2012) and at the *Centre Perelman de philosophie du droit* at the The Free University of Brussels (2013).

Abstract

This paper explores the way in which a political concept that was originally aimed at achieving religious liberty in France, has turned into a type of narrative secularism, that is, a discourse that addresses national identity in a context of social uncertainty. Narrative secularism can thus operate as a master framework for public debates on religious minorities and can bridge the gap between ideologies and practices of secularism. The paper focuses on the period between 1989 and 2010, when significant symbolic events concerning the regulation of religious diversity took place in France. The first section of the paper revises the main features of French secularism. The second section reviews the outcomes of twenty years of public controversies on Muslim headscarves, and the last chapter elaborates on the recent legislative decisions that have prohibited the use of the integral veil in France.

Should French secularism (*laïcité*) be considered an exception, a source of inspiration or a challenge to the democratic management of religious diversity? In other words, is French secularism a historical model to follow or is it a rather negative example of an endless source of social conflicts and juridical readjustments to be avoided? For the last three decades, beginning with the debate on private schools in 1983, the secular nature of the French state has been a subject of media attention. This has led to all types of religious

issues being placed at the forefront of public debates and has given rise to some legislative adjustments.

Historically, secularism has been a subject of disagreement in France, at least until its inscription in the 1946 Constitution (Baubérot 2004). According to Baubérot, since its emergence in the French Revolution, secularism has functioned as a pacifying instrument for the disagreements between political actors and Catholic institutions. As Catholicism lost its central social role during the 19th century, public institutions, and in particular public schools, slowly emerged from the shadow of the religious umbrella. The 1905 Law on the Separation of the Churches and State (*Loi sur la séparation des Églises et de l'État*) is still the main legal instrument for implementing the principle of secularism. Secularism is first and foremost a tool for the conciliation of radically opposed views and for ensuring the neutrality of the state in order to guarantee freedom of conscience. Admittedly, the growing number of minority religious groups, greater subjective freedom concerning religious affiliation, the growing appeal of Evangelical and charismatic movements to youngsters, along with the increasing visibility of certain religious practices by Muslim groups, have all challenged the established patterns for the regulation of religious diversity and increased public sensitivity on this issue.

Recent debates have mostly focused on the way secularism, as a historical idea, should be reaffirmed as a core value for social integration in France and as a regulatory principle of social life. The ban on the use of the burqa in public spaces, for example, has been one of the most recent points of disagreement in this long French saga. Indeed, secularism is often used in public debates as a kind of shared value, even though its use became widely popular only in 1989, when the first discussion on the Islamic headscarves in schools started (Baubérot 2009). We will here elaborate on the current status of secularism and its transformation from a political principle that should mainly address the relations of the state with the Catholic Church, to a foundational stone of the national narrative. In doing this we will follow the path previously paved by legal scholar Alessandro Ferrari, who defines narrative secularism as a form of discourse (Ferrari 2009).

Narrative secularism entered the French public discourse through official reports, parliamentary debates and the media (Koussens 2009). According to Ferrari, narrative secularism has no legal authority –and therefore it cannot create laws- but it nevertheless entails a certain normative power. It somehow has taken on a life of its own, creating a strong division between the defenders of an open versus a strict or closed secularism. What we here refer to as narrative secularism often invokes something that is specific to France, where the state firmly restricts the visibility of religion in the public sphere. How then has this type of French secular exceptionalism been created? And, how does it circulate so as to affect normative orders not only in France, but also in countries like Belgium, Canada or Switzerland?

In order to answer these questions we need to explain how a political concept in France, that was historically aimed at achieving religious liberty, freedom of conscience, and equality by institutional and juridical means, has been transformed into a narrative secularism, that is, a discourse performed to address national identity in a context of social and historical uncertainty. While both institutional and juridical dimensions of secularism may appear as stable and fixed, narrative secularism is still fluctuating. Such volatility encourages controversy, as it becomes an arena for expressing the conflicting views on secularism. We will thus explain how narrative secularism operates as a master framework for juridical and political debates on religious minorities. It must be noted that different and competing secularisms coexist in the French public sphere, and that they converge with what Benford and Snow have called framing (Snow & Benford 1988; Benford & Snow 2000). Framing processes help secular narratives to bridge the gap between the ideologies and the practices of secularism. From this perspective, it is particularly interesting to look at the legislative and juridical actors as agents who actively engage in the producing and maintaining of social meanings for constituents, antagonists, and bystanders.

We will take the polemics on the Islamic headscarf as an illustration of the strength of some narratives over other, and how in some cases this has led to incorporating strong ideological stances in the law that historically instituted juridical secularism in France. Our study focuses on the period between 1989 and 2010, in which significant symbolic events concerning the regulation of religious diversity in France are highlighted. The first crisis relates to the wearing of the Islamic headscarf in public schools (1989). This later converged with the law banning ostensible religious symbols from schools (2004). More recently there is the controversy on the use of the *burqa* in public spaces (2010). Accordingly, the first section of this paper revises the main features of French-style secularism. In the second section we will look at the outcomes of twenty years of controversies over the public display of Muslim headscarves. The third section elaborates on the more recent discussions on full frontal veils, and the legislative decisions that have prohibited their public use in France.

Historical patterns of secularism in France

France has long been depicted as a country of immigration, where the process of integration is framed by republicanism, and since the mid-2000s, by secularism (*laïcité*). The main distinction between France and its European neighbors lies in their different definitions of nationhood (in particular when compared to Germany and the United Kingdom) and in the development of a multiculturalism, which articulates race and ethnicity as the central criteria for the implementation of justice. The current French position can be best defined as a moment of reinvention, both in terms of inventing a vocabulary that suits the new European style of governance -where discrimination is a central issue- and relying on a type of political grammar that can connect to a historical perspective (Fassin 2002; Calvès 2002; Amiraux & Simon 2006). This evolution started in the tense years of 2003 and 2004. This period was marked by the legal banning of conspicuous religious signs from public schools, and later by public debates and parliamentary discussions that led to prohibiting the full-face veil (*niqab/burqa*) in public spaces. Against this backdrop of social tension, discrimination, unemployment and police repression, there were three weeks of urban riots across France in November 2005, followed by extensive discussions between experts and politicians on the legitimacy of collecting ethnic data for public statistics. The government-led debate on French national identity and the discussion on the restriction of double citizenship for French citizens had augmented the tensions across the country. The list of public statements and political decisions designating Muslims and other immigrants as targets of restrictive policies is long. We have placed them at the beginning of this section, as they define the constellation within which narrative secularism has grown.

The current challenge for French leaders and public agencies in this respect seems to be two-fold. The first is the growing gap between historical narratives (France as a nation that welcomes foreigners and the republican framework for integrating them) and practices (discrimination and public hostility against certain groups of people). The second challenge is the conflict between political principles (equality and state neutrality on religious issues) and their implementation in terms of legal restrictions, with the state being particularly active in the field of religious diversity (Amiraux & Guiraudon 2010). Four elements which stemmed from the French Revolution nowadays structure the French republican approach to social integration: first, the unmediated relationship between the citizen and the state (equality through membership in a national political community); second, secular public education; third, the belief in France's international mission; fourth, a strong interventionist state (Levy, Cole & Le Galès 2008). These elements actively contribute to the conviction that the French way to procure equality between its citizens is somehow exceptional (Laborde 2001). This conviction, however, is ripe for further exploration, starting with the challenges aimed at it in recent episodes, and continuing with

the capacity of the republican model to govern an ethnically and culturally diverse country, particularly when diversity is expressed in religious terms.

In order to achieve equality among citizens and among religions, French secularism relies on two main principles: the religious neutrality of the state, and the separation of Church and state. These two institutional features result from a democratic process and are founded on the recognition of the sovereignty of the people. They share an ultimate goal: equality. The separation of Church and the state, which is inherent to the process of secularization in modern societies, implies the reciprocal autonomy of both: “the state (...) cannot embrace any of the numerous, and sometimes hard to reconcile, fundamental reasons that citizens embrace” and to which they attach their “convictions of conscience” (Bouchard & Taylor 2008: 134-6). There is not an exclusive, unique and pure form of secularism in France, or in any other country, but a series of historically varying forms of secularism. To paraphrase Selby, secularism in France encompasses both explicit aims and implicit consequences (Selby 2012: 169). These arise as much from current representations in social debates, as from the nature of the policies adopted -policies that may, of course, vary within a single secular regime, underlining the polymorphous character of secularism. Secularism, in its contemporary common use, is therefore a mixture of history, ideology and policy. It covers social dimensions and embodies worldviews and power relations (Casanova 1994; Taylor 2007; Asad 2003). A secular state is defined by the fact that its legislative and judicial processes are out of religious control, and its actions and decisions are neutral towards all religions (Kuru 2009: 7).

Nevertheless, states that define themselves as secular continue to engage with religion, particularly in the classroom. The educational arena has indeed become a central space for the debate of secularism (Modood 2006; Kiliç 2008). Over the last two years in France, the public debates have extended past the school perimeters to involve the mothers of the schoolchildren. For instance, the question of whether or not to allow mothers wearing the headscarf to enter the school premises currently represents the principal axis of predominant secularism. In his comparison between France, Turkey and the United States, Kuru explains the influence of political ideologies on secularism. This influence, he states, has mostly resulted in two types of secularism: an assertive secularism that excludes religion from the public sphere, versus a passive secularism that allows for the public visibility of religion. In France, assertive secularism would be represented by the notion of *laïcité de combat* while the passive secularists would rather be identified as the defenders of the *laïcité phurienne*. These two positions illustrate the two main opposing views that have been fueling contrasting narrative secularisms in France. We can find them in every episode of the endless public discussions that have placed secularism at their core. For both positions, secularism is a positive value and its removal from the constitutional text is not up for debate.

All these interrelated elements have obliged European societies to rise to the challenge of redefining the meanings of equality and integration without losing sight of the religious dimension of personal identity. The difficulty lies in the fact that public discussions on Islam and Muslims continue to uphold secularism as a core national value, thus a means for integration. While secularism, as a principle, merely defines the obligations of the state concerning religion, it is increasingly being defined as a narrative, which also results in it being coded in terms of national values. These values embody a social consensus, which in turn is supposed to be expressed in individual actions and gestures. The meaning attributed to the idea of emancipation is a good example of such dynamics. Emancipation from the influence of religion has been a central motto in the history of French secularism, and still remains one of the key aspects of republicanism, as elsewhere in Europe. This emancipatory mission, inherited from the Enlightenment, is intended to liberate citizens -and most often women- from religious obscurantism so that they can fully participate in the public sphere. This idea has been updated through the growing French obsession with regulating religious female garments (headscarves and the

full frontal veil). This is but an example of how secularism has become encoded in a narrative that defines it as the most efficient way of protecting Muslim women's rights. Secularism has also been increasingly conflated with, or at least seen as interwoven in national identity (Baubérot & Milot 2011). In some cases it has been recast by the emergence of a postcolonial conscience (Bhambra 2010). This is where the principle turns into a narrative, as the headscarf and full veil discussions will help us to illustrate.

The *Hijab* and *Burqa* controversies: on how secularism has been displaced, and then misplaced

In France, the controversy over the Islamic headscarf started in 1989, when three students were first suspended and later expelled from a public school in a Parisian suburb after they refused to remove their scarves in class. In this context, the French *Conseil d'État*, which is the highest administrative jurisdiction in the country, had to rule on whether or not the public wearing of religious symbols was compatible with the republican principle of secularism. The Council rendered a decision detailing the conditions under which the Islamic headscarf may be permitted in teaching establishments. It ruled that students benefit from freedom of conscience and expression, and that this freedom "includes the right to express and to manifest their religious beliefs within educational establishments, while maintaining respect for pluralism and for the freedom of others." Students may then wear religious symbols at school, but must nevertheless respect the teaching activities and the content of the educational programs, along with the more general objectives of republican education. The *Conseil d'État* clearly stated that "the wearing of religious symbols by students, symbols which are worn with the purpose of expressing belonging to a religion, are not in themselves incompatible with the principle of secularism insofar as they constitute an exercise in the freedom of expression and the manifestation of religious beliefs."

In authorizing the wearing of religious symbols in public schools, the *Conseil d'État* opened the possibility for a rather liberal interpretation of secularism. It also confirmed a way of dealing with the individual expression of religious convictions on a case-by-case approach that has dominated for over a hundred years in jurisprudence (Conseil d'État 2004). This interpretation recalls the notion of recognition secularism (Baubérot & Milot 2012: 110). According to this, the state can grant the individuals the full moral autonomy to control their own lives and to choose their worldview, as long as these choices do not present an attack on others or on the public order. This conception of secularism has been encouraged by the revival of liberal political philosophy and closely resembles some of the ideas of Will Kymlicka. He, for instance, considers that "individuals must (...) have the resources and liberties needed to lead their lives in accordance with their beliefs on value, without fear of discrimination or punishment" (Kymlicka 1998: 81). He then adds that the state must leave the possibility of questioning these beliefs to the individuals. From this perspective, the neutrality of the state is not only perceived as the absence of intervention on the part of the state, but also as an obligation to intervene in order to allow the citizens to revisit, if they wish, their conception of living a good life. The neutrality of the state thus enables the individuals who make up the political society to exercise their freedom of thought and their autonomy. Following this interpretation, and for fourteen subsequent years, religious symbols in general, and the Islamic headscarf in particular, were officially authorized in French public schools in a number of decisions by the *Conseil d'État*.

The turning point was in 2004, when the legislative frame moved from a case-by-case appreciation to a general prohibition of the headscarf in public schools. This turn must be situated in a broader political perspective in order to be properly understood. Such context is the combined result of the traumatic 2002 presidential elections, which revealed

the growing popularity of Jean-Marie Le Pen, leader of the extreme-right National Front, and the construction of the Muslim presence in France as a public threat (Thomas 2008; Mohammed & Hajjat 2013). Narrative secularism emerged in this loaded political context, but also as the result of a series of public reports that helped the diffusion and adoption of a certain vocabulary, associations of ideas and images (Koussens 2011) that later circulated into larger social spaces, until it recently reached the workplaces (Gomes, Orgerit & Ufarte 2013). In the early 2000's, two major reports on these topics were commissioned and published by the government. They offer the first evidence of a changing tone in the language around the issue of social cohesion. They also provide insights into the evolution of secularism from a principle organizing public life to a national value to be fought for - mostly encoded in a narrative of threat, security and national integrity.

The first report was submitted by the French representative Francois Baroin in 2003 (Baroin 2003), while the second one was the result of a parliamentary mission under the auspices of Jean-Louis Debré that sought to examine the place of religious symbols in public schools (Debré 2003). Both documents provided the media with the notions of communitarianism and Islamism (or political Islam) as a main threat to the Republic. They constitute a significant move toward a culturally based definition of secularism that identifies Islam as the problem and secularism as a principle whose application should be strictly monitored. After describing the *Conseil d'État's* advice of 1989 as a "misunderstanding of the situation" that underestimated the risks associated with Islamism, Baroin stated that secularism should become a new political project for the French right in order to boost the dynamics of republican integration, with Islam being "at the core of all preoccupations" (Baroin 2003). The Debré report concluded that the juridical setting of secularism was unsatisfactory, in particular for the staff working in education. The presence of religious signs was depicted as a divisive factor with local, national and international dimensions. In that context, "secularism is a project to politically and socially integrate the individuals in a unique and non-divisive national community, and contrary to a conception of society in which distinct communities develop alongside each other" (Debré 2003). Both reports paved the way for the public address by President Chirac on the 3rd of July of 2003, in which he expressed his willingness to reopen the debate on secularism. To this end, he appointed Bernard Stasi, former ambassador and high state official, as the head of a group in charge of reflecting upon "a form of secularism which would serve as a guarantor of national cohesion and would respect individual differences".

In 2004, the report presented by *the Commission de réflexion sur l'application du principe de laïcité dans la République* (hereafter the Stasi Report) indicated that the school must allow for the construction of a common destiny for all French citizens. However, the report considered that this project was being challenged by an increasing communitarianism that might potentially lead to exclusion. The Stasi Report insisted that "the principle of neutrality is the first condition of secularism", making it a corollary of the principle of equality for citizens. Consequently, the report highlighted that "the requirements of absolute neutrality must be tempered by reasonable accommodations permitting all to exercise their religious freedoms". All of the 2003 and 2004 reports stress the centrality of gender equality within the republican, secular context of French history, and point to the Muslim communities as the main target for redeploying secularism in order to redress their incongruity with the gender-equal French way. As Selby points out, secularism has been linked to feminist politics to the point that "French secularism is justified and articulated as paramount to ensuring Muslim women's equal access and full rights in France" (Selby 2012: 170). The March 15, 2004 law that stands as the main outcome of the Stasi Report abstains, however, from formally making any value judgment with regard to one religion or another. It bans all the ostensible symbols from public schools, but never defines which one(s) in particular might be considered ostensible.

Nonetheless, the seeds were already sown: the Stasi Report served to legitimize a negative image of the Islamic headscarf and of specific Islamic practices, and it reinforced

the idea that the new law was only designed to regulate these practices. The law of 2004 construes the state as a sort of philosophical liberator by hinting that individual autonomy can only be achieved through emancipation from religious belonging, something conceived as being incompatible with democratic values. With the law prohibiting religious symbols at schools, France embodies what Baubérot and Milot have called a separatist secularism. This image implies a type of secularism that emphasises “an almost ‘tangible’ division between the private life spaces and the public sphere that concerns the state and the [governance] institutions” (Baubérot & Milot 2011: 90). This model of the secular can be traced back to John Locke, who in his *Letter on Toleration* wrote: “I esteem it above all things necessary to distinguish exactly the business of civil government from that of religion and to settle the just bounds that lie between the one and the other.” Locke advocated here a clear distinction to avoid “controversies that will always be arising between those that have, or at least pretend to have, on the one side, a concern for the interest of men’s souls, and, on the other side, a care for the commonwealth” (Locke 1996 [1689]: 2-3). As for the specific case of the 2004 law, the students, who were being trained as future citizens, were asked on a daily basis to demonstrate such a distinction when entering the school perimeter. This law thus presents secularism as a founding myth of French modernity (Baubérot 2009), something that has been very present since then in the dominant narrative of secularism. A historical perspective will help us to identify more precisely what is at stake in this French way of describing secularism as a separation of civic and religious identities.

In his analysis of the decision by the Constitutional Council upholding the law of October 11th, 2010, on the integral veil, Saint-Bonnet underlines the immaterial dimension of publicness in order to define the minimal requirements for social life, that is, the reciprocal expectations upon which social life is based. Bearing in mind the old 1905 law and the “legal consequences of free will to preserve the world as a place in which to live piously” (in the case of the civil death of Catholics as a consequence of religious confinement), he brings forward the liberating dimension that underlies the decision to retreat from the world: this is what is required to do away with a world in which living virtuously is impossible. Catholic cloistering, for example, fully and effectively removes the bodies and the faces from the temporal world, but it also shows the extent to which the social contract is linked to the right to wearing certain religious garments. Since the *Ancien Régime*, “there remains this idea that those who have made the choice to withdraw from the world cannot and should not be counted as citizens” (Saint-Bonnet 2011: 12). We cannot at once be outside the world and within it. In some ways, the contemporary regime of separation initiated in 1905 makes it easier to distinguish both the minimum requirements for life in society (state neutrality in the public sphere) and the individual exercise of freedom in the private sphere. The possibility of a liberal secularism is in fact based on the exercise of freedom of thought: everyone may believe what one wishes in the private sphere without suffering any public consequences. From Locke to the *Conseil d’État* before 2004, this had been the shared conviction of the magistrates. The public sphere is therefore seen as a space that exists through cultural consensus and enjoys priority over individual liberties -all while clinging to the idea that religious practice can be reduced to private preference and personal choice. The public sphere thus becomes a third space, that is, a space where membership in the political community and citizenship are realized. With the decision of rendering illegal the use of the full veil in public spaces, the legislator gave new impetus to the dramatization of secularism as a national credo.

Under the *Burqa*: the new face of French secularism

Even if the *Conseil d’État* has for long displayed a commitment to the liberal philosophical tradition, more recently it has begun to retreat from the Lockean idea of separation as a

condition for tolerance. Instead, it has moved closer to the dominant narrative of secularism as established by the elected representatives and statesmen over the last two decades. The *Conseil d'État* has therefore been more and more susceptible to the “ossification of French society on secularism” (Lochak 2007: 27). The *Conseil* has indeed endorsed several interpretations that legitimate jurisprudential stiffening in the regulation of religious diversity (Zeghib 2008). This evolution is particularly noticeable in a 2008 case concerning the *niqab* that re-launched the public debate on this issue and ended up in the banning of the integral veil in open spaces.

In a decision made on June 27, 2008, the *Conseil d'État* denied French citizenship to a Moroccan woman who wore the *niqab*, thereby establishing that the radical practice of her religion was incompatible with the essential values of the French community, and in particular with the principle of equality between men and women. The questions that were at stake (access to citizenship and access to education) were certainly different, but this type of reasoning by the *Conseil* reveals a number of similarities with the neighbouring discussion in 2004. This illustrates to what extent a particular narrative of secularism has permeated the highest French jurisdiction. The case was as follows: a Moroccan woman wished to appeal a previous legal decision by asking the *Conseil d'État* to annul an administrative document that denied her request for French citizenship on the grounds of her non-assimilation. To establish the lack of assimilation, the jurisprudence of the *Conseil* requires clearly defined facts, which must imperatively converge in such a way so as to demonstrate that a foreigner is radically hostile to French essential values (Chrestia 2008; Malaurie 2008). In a decision rendered public on June 27th, 2008, after reiterating that the plaintiff was wearing “the clothing for women of the Arabian Peninsula [which is] the *niqab*” -and not the *burqa*, as was later reported in the media- the judge in charge declared that

While Mrs. Machbour speaks French well and her two children are educated at a public school, and while she was visited by a male gynecologist during her pregnancies, it remains that [...] she carries out an almost reclusive life cut off from French society: she does not receive people in her home; in the morning she occupies herself with house-cleaning, as well as walks with her baby and children, and in the afternoon she goes to the home of her father or father-in-law. For her groceries, she indicates that she can do her shopping alone, but admits that she most often goes to the supermarket accompanied by her husband.

The judge then deduces that

It seems that Mrs. Machbour has not embraced the values of the Republic, in particular those relating to the equality of the sexes. She lives in total submission to men and to her family, which is manifested as much in her manner of dress as in the organization of her daily life [...]. She finds this normal, and even the idea of contesting this submission does not even occur to her.

The judge finally rejected the plaintiff's application to French citizenship. These conclusions were followed by the *Conseil d'État*, which thereby judged that Mrs. Machbour had “adopted a radical practice of her religion, incompatible with the essential values of the French community, principally the belief in the equality of the sexes”. This reasoning inspires three considerations. First, just as the law of 2004 was not expressly aimed at any religious sign in particular, the *Conseil d'État* here carefully avoids naming the specific religion of the plaintiff, even if the nature of the symbol in question makes clear that the wearing of the *niqab* is at the centre of the judges' concerns. The meaning

attributed to religious clothing is similar to one that might have been developed in the Stasi Report. Secondly, the decision of the *Conseil* contributes to the slow expansion of the requirements of secularism, although it remains in principle something that should only be imposed on the state and its institutions, not on the individuals. This interpretation had already been set in motion by the law of March 15th, 2004, which imposed a secular requirement (the banning of ostentatious religious signs in public schools) on students who, as citizens, are customers and not agents of a public service. Here, the *Conseil d'État* goes even further. By declaring the incompatibility of the radical practice of religion with assimilation to the French community, the *Conseil's* decision breaches the realm of intimacy and imposes the burden of secularism on those who are not even French nationals yet. It thereby establishes that if newcomers to the country wish to make a pledge of good citizenship, they should previously justify a minimal loosening of their religious convictions and not practice their religion outside the norms tolerated by the majority, that is to say, in a radical form. In its process, the *Conseil* assumed a position that is opposite to what Locke considered crucial for toleration: that "the care of souls is not committed to the civil magistrate". In the Machbour decision, the judge takes on the charge of qualifying the normalcy of religious practices, an action that indirectly conditions the national body. Finally, the *Conseil* avoids taking a stand on the degree of radicalism beyond which assimilation is considered unviable. Indeed, in the description of her own life, Mrs. Machbour -who confessed wearing her *niqab* "more out of habit than of conviction"- seems to have conducted her daily life in many respects similar to a large number of other (potentially non-Muslim) women, so it is difficult to conclude which facts rendered clear evidence of her non-assimilation.

In the reasoning of the *Conseil d'État*, wearing the *niqab* implies a degree of radicalism. As mentioned before, this statement breaks away from the position previously held by the *Conseil* until 2004. In 1989, it had decided that "the wearing of religious symbols by students, symbols which are worn with the intent to manifest belonging to a religion, are not in themselves incompatible with the principle of secularism insofar as they constitute an exercise in the freedom of expression and the manifestation of religious beliefs." Instead, in 2008 the *Conseil* focuses on the nature of the religious symbol in order to deduce its incompatibility with the "values of the French community". The position assumed by the *Conseil* consistently echoes a new narrative of secularism reacting to a perceived threat, whether it is external (Muslim terrorists) or internal (Muslim communitarianism). In so doing, it distances itself from the traditional model of separatist secularism and promotes instead a rather anti-religious regime whose ultimate purpose is cultural assimilation. Secularism thus becomes the guardian of a republican orthopraxis, but eventually it also restricts freedom of expression.

The decision on the *niqab* intensified the republican rhetoric on the management of religious diversity and launched the most recent controversy on Muslim headwear, which ended up with another legislative move, this time solely targeting the *burqa*. In the summer following the Machbour case, several members of the parliament asked the government for a law banning the full veil from public spaces. They requested that French values (including a republican conception of secularism) and not only rights, be taken into account in this new law. In 2009, the National Assembly appointed the deputy André Gerin as the head of a *Mission d'information sur la pratique du voile intégral sur le territoire national* (hereafter the Gerin Report). By constantly referring to the 2003 Stasi Report, the conclusions of the Gerin Report, which were submitted in January 2010, completely endorsed the republican conception of secularism. It therefore sustained the necessity to emancipate all citizens from any all-encompassing doctrine, whether religious or not. Accordingly, the integral veil is not only considered an offense to the freedom, dignity and equality of women, but a symbol reflecting the willingness to deny the French value of fraternity (AN Rapport Gerin 2010: 88).

Secularism does not appear here as a mere practice for the regulation of religious diversity based on the recognition of individual rights. It is essentially presented as a value. Turning secularism into a value makes it instrumental in upholding moral principles -for instance, emancipation or fraternity- that end up prevailing over the principles of justice (Koussens 2010). When conflicting sets of values confront one another in the public debate, the clash is hard to avoid. Faced with this antagonism, the state ceases to be an arbitrator and becomes a participant. It thus establishes the boundaries of acceptable religious practices and distinguishes what is publicly scandalous from what is not. The full veil is clearly now one of these scandalous practices that the French Republic can no longer tolerate. Following the recommendations by the Gerin Report, the Parliament adopted a new law, dated October 11th, 2010, banning the full veil in public spaces -or, to be more precise, a law “banning the covering of the face in public spaces”. Once again, the law has abstained from actually designating a religion in particular or making a value judgment on Islamic practices.

This most recent *burqa* controversy brings forward the limits of the secular state for the legitimate imposition of limits on expressions of religiosity that conflict with the established principles of a given society. While liberal democracies in general are engaged in the protection of freedom of conscience and religion, secular states in particular are being constantly challenged by religious claims to find balanced solutions that are both legitimate and viable with the liberal principles. Even if certain manifestations of faith may be shocking to the established public values, they must still be protected by the secular state as long as they do not pose a threat to public order. By banning the full veil, Muslim women who wear the *burqa* have become the subjects of a double discrimination. On one hand, they are discriminated against in their right to choose who they want to be in private, as well as being oppressed by an unbearable patriarchal conception of society. On the other hand, they are also publicly discriminated against as the state asks them to become invisible, a request that is not asked of men or of other religious groups whose practices may be even more orthodox. The story of the experiences lived by the women underneath the *burqa* is certainly the critical piece missing from the narrative of French secularism. With a few exceptions, these voices have hardly been heard, and when they are, they tend to suffer from the effects of the liberal context: for example, they seem to become more audible when they comply with the rhetoric of rational choice. But even then, the religious choice of a woman to wear this or that garment remains largely unintelligible. A petition was filed in 2011 at the European Court of Human Rights against France by a French citizen who wears the *niqab*, and whose case was set up around the circumstances of her free personal choice. But the judges had a difficult task before them. In fact, the plaintiff explained at length that she did not wear her *niqab* continuously, but only after assessing the suitability of doing so in both public and private situations. Her petition was motivated by her desire to continue wearing the *niqab* “according to when she so chooses, particularly when her spiritual mood so dictates” (S.A.S. petition v. France, n. 4385/11). We can clearly recognize here the idea of freedom of thought, supported by the notion of a spiritual mood, which the plaintiff explains as follows: “the goal is not to create a nuisance for others, but to enjoy accord with oneself”. This intersection of legal frames, the spiritual realm, and contrasting notions of privacy and publicness refers to the private experience of the individual, who is just as much part of the public sphere as of the collective experience. These personal dimensions have been silenced over the last two decades, during which secularism has transformed itself into a narrative.

What are the limits to freedom of religion in a secular state? The transformation of French secularism into a narrative has evolved, as we here argue, from referring to the public role of religion to justifying limitations on religious freedom. Liberal secularism, radical as it may be in its French version, was historically based on nominal freedom: people may believe what they want in the private sphere. As a consequence of this, the public space is conceived of as based on a cultural consensus that overrides individual

liberty, so that religious practice can be reduced to preferences and choices. Again, a new affair caused this issue to be brought up in France recently. This time the question was whether to extend the strict separation of public and private realms to the workplace. The case goes as follows: a woman working in a daycare (the crèche Baby-Loup) which is opened 24 hours a day and 7 days a week in a multiethnic, disadvantaged neighborhood (Chanteloup les Vignes), was fired in 2008 because she refused to take off her headscarf. The justification for her dismissal was based on an internal bylaw that existed since the creation of the daycare in 1991. This bylaw asserts the obligation to maintain “the philosophical, political and confessional neutrality” of the workplace. In March 2013, the Court of Appeal concluded that the religious freedom of the employee should be protected. This applies even in a professional context such as a daycare. The Court basically stated that the individual freedom of religion does not stop at the doors of private companies, even when these companies administer a type of service that is public in nature. Despite working in a place that maintains a strict secularism, the right of the employee to wear the headscarf should be respected under the clause that protects freedom of religion. This decision has generated a lot of public reaction and the reappearance of the dichotomist structure of narrative secularism, this time favoring the *laïcité plurielle* camp.

Conclusion

Just as there are no absolute freedoms, there is no pure form of secularism. Secularism has different and conflicting interpretations, ranging from separation between religious institutions and the state to the eradication of religion from the public space. In France, the narrative of secularism has recently evolved in two different directions: as an official ideology, and as an identity issue. The firmness of French secularism has historical roots that can be traced back to the opposition between the republicans and the Catholic Church in the 19th century. This antagonism led to the 1905 Law of Separation, and explains the vividness and the political assertiveness of antireligious movements in France. In merging juridical secularism with narrative secularism, the recent jurisprudence by the *Conseil d'État* (the Machbour case) has given wings to the republican rhetoric on the management of religious diversity. The way in which the wearing of religious garments in public has been dealt with reflects the dominant representation of secularism as a republican value. This is a very partial representation of secularism though, and it depends on a series of symbolic norms that are strongly printed on the collective consciousness of French society. This was the case with the 2004 law concerning the wearing of religious symbols in public schools, and it is also the case with the 2010 law regarding the use of integral veils in public spaces.

The everlasting discussion on Islam and Muslims adds to this challenge by presenting secularism not only as the cornerstone of French national identity -or at the very least, as inextricably linked to it- but as a principle that needs to be defended as a fundamental European value conducive to social integration. This notion has been evidenced, among other examples, in recent statements by the leaders of the National Front. We can also find indirect traces of it in the legal reasoning of the European Court of Human Rights in the Lautsi case. The notion of framing that we introduced earlier in the text helps us to understand the process underlying this general European discussion. Narrative secularism -defined in the French context as a national patrimony of values that includes modernity, emancipation, gender equality, autonomy and rational choice- operates in France as a process of framing that first, has homogenized the perceived ways in which Muslims relate to religion, and secondly, has glossed over their internal diversity, making their individual voices inaudible in the public conversation that surrounds them. The consequence is that “because of the rigidity of ‘laïcité’, collective projects and state-directed political participation are primarily about religious recognition” (Parvez 2013:

208). This phenomenon has generated widespread protests and political division within the Muslim middle-class. By changing from being a principle to becoming a narrative, secularism operates in contemporary France as an idea that supplies both context and content, providing altogether a “particular definition, [a] causal interpretation, moral evaluation and/or treatment recommendations” to the problem raised by Muslim garbs in public places (Morey & Yaqin 2011: 21).

References

- Amiraux, Valérie and Virginie Guiraudon. 2010. “Discrimination in comparative perspective: policies and practices”. *The American Behavioral Scientist* (53): 1691-1714.
- _____ and Patrick Simon. 2006. “There are no minorities here: cultures of scholarship and public debate on immigrants and integration in France”. *International Journal of Comparative Sociology* 47 (3-4): 191–215.
- Assemblée Nationale. 2010. “Rapport d’information fait au nom de la mission d’information sur la pratique du voile intégral sur le territoire national”. Retrieved November 10, 2013. (<http://www.assemblee-nationale.fr/13/rap-info/i2262.asp>)
- Baroin, François. 2003. “Pour une nouvelle laïcité. Rapport”. *Voltairenet.org*. Retrieved November 10, 2013. (<http://www.voltairenet.org/rubrique506.html>)
- Baubérot, Jean. 2007. *Les laïcités dans le monde*. Paris: PUF.
- _____. 2004. *Laïcité 1905-2005, entre passion et raison*. Paris: Seuil.
- _____. 2009. “Liberté, laïcité, diversité - la France multiculturelle”, Pp. 13-26 in *Appartenances religieuses, appartenances citoyennes. Un équilibre en tension*, edited by P. Eid, Pierre Bosset, Micheline Milot and Sébastien Lebel-Grenier. Québec: Presses de l’Université Laval.
- _____, Micheline Milot, *Laïcités sans frontières*, Seuil, 2011.
- Beauchemin, Chris, Christelle Hamel, Maud Lesné, Patrick Simon and the TeO Research Team. 2011. “Discrimination: a question of visible minorities”. *Populations & Sociétés* 466 (April 2010). Retrieved February 10, 2011. (http://www.ined.fr/en/publications/pop_soc/bdd/publication/1504/)
- Benford, Robert D. and David A. Snow. 2000. “Framing Processes and Social Movements: An Overview and Assessment”. *Annual Review of Sociology* 26: 11-39
- Bouchard, Gérard and Charles Taylor. 2008. “Building the Future. A Time for Reconciliation. Report”. Commission de consultation sur les pratiques d’accommodements reliées aux différences culturelles. Gouvernement du Québec. Retrieved November 10, 2013. (<http://www.accommodements-quebec.ca/documentation/rapports/rapport-final-integral-en.pdf>)
- Calvès, Gwénaële. 2002. “Il n’y a pas de race ici”. *Critique internationale* 17: 173–186.
- Chrestia, Pierre. 2008. “La burqa est incompatible avec la nationalité française”. *Actualité juridique – Droit administratif*, 36: 2013-2017.
- Debré, M. Jean-Louis. 2003. “Mission d’information sur la question du port des signes religieux à l’école. Rapport n. 1275 fait au nom de la mission d’information sur la question des signes religieux à l’école”. Asssemblée Nationale. Retrieved October 12, 2013. (<http://www.assemblee-nationale.fr/12/rapports/r1275-t1.asp>)
- Fassin, Didier. 2002. “L’invention française de la discrimination”. *Revue française de science politique*, 52 (4): 403–423.
- Ferrari, Alessandro. 2009. “De la politique à la technique: laïcité narrative et laïcité du droit. Pour une comparaison France/Italie”, Pp. 333-345 in *Le droit ecclésiastique de la*

- fin du XVIIIe au milieu du XXe siècle en Europe*, edited by B. Basdevant-Gaudemet and F. Jankowiak. Leuven: Peeters.
- Gomes, Barbara, Xavier Orgerit and Thomas Ufarte. 2013. "Liberté de religion (Code du travail, Constitution et CEDH): La liberté d'expression religieuse au travail à l'épreuve des soubresauts du principe de laïcité". *La Revue des Droits de l'Homme*. Retrieved December 10, 2013 (<http://revdh.org/2013/05/01/expression-religieuse-au-travail-laicite>)
- Koussens, David. 2009. "Sous l'affaire de la burqa... quell visage de la laïcité française?". *Sociologie et société* 41 (2): 327-348.
- _____. 2010. "L'État français et l'expression des confessions religieuses: entre neutralité confessionnelle et neutralité référentielle". *Politique et sociétés*. 29 (3): 39-60
- _____. 2011. "Expertise publique sous influence? Rapports publics français et québécois relatifs à l'expression individuelle des convictions religieuses dans les institutions publiques". *Archives de sciences sociales des religions* 55: 61-79.
- Kuru, Ahmhet. 2009. *Secularism and State Policies toward Religion. The United States, France, and Turkey*. New York: Cambridge University Press.
- Kymlicka, Will. 1998. *Multicultural Citizenship. A Liberal Theory of Minority Rights*. Oxford: Clarendon Press.
- Laborde, Cécile. 2008. *Critical Republicanism: The hijab Controversy in Political Philosophy*. Oxford: Oxford University Press.
- _____. 2007. *Republicanism and Political Theory*. Blackwell: Oxford.
- _____. 2001. "The culture(s) of the Republic. Nationalism and multiculturalism in French Republican thought". *Political Theory* 29 (5): 716-735.
- Levy, Jonah, Alistair Cole and Patrick Le Galès. 2008. "From Chirac to Sarkozy: a new France?" Pp. 1-21 in *Developments in French Politics* 4, edited by A. Cole et al. Basingstoke: Palgrave Macmillan.
- Lochack, Danièle. 2007. "Le Conseil d'État en politique". *Pouvoirs* 4 (123): 19-32.
- Locke, John. 1996. *A Letter Concerning Toleration* [1689]. Pp. 1-22 in *Great Books of the Western World* (Vol. 35) edited by M. Adler. Chicago: Encyclopaedia Britannica.
- Malaurie, Philippe. 2008. "Une pratique radicale de la religion peut fonder une opposition gouvernementale à l'acquisition par mariage de la nationalité française", *La semaine Juridique – Édition Générale* 38 (II, 17 septembre 17, 10151): 34-36.
- Morey, Peter & Amina Yaqin. 2011. *Framing Muslims. Stereotyping and Representation after 9/11*. Harvard: Harvard University Press.
- Parvez, Fareen. 2013. "Representing 'Islam of the banlieues': class and political participation among Muslims in France". Pp. 190-211 in *Muslim Political Participation in Europe*, edited by J. Nielsen. Edingurgh: Edinburgh University Press.
- Saint-Bonnet, François. 2012. "La citoyenneté, fondement démocratique pour la loi anti-burqa. Réflexions sur la mort au monde et l'incarcération volontaire." *Jus Politicum* 7. Retrieved November 12, 2013 (<http://www.juspoliticum.com/La-citoyennete-fondement.html>).
- Selby, Jennifer A. 2012. *Questioning French Secularism: Gender Politics and Islam in a Parisian Suburb*. New York: Palgrave Macmillan.
- _____. 2011. "French secularism as a 'guarantor' of women's rights? Muslim women and gender politics in a Parisian banlieue". *Culture and Religion* 12 (4): 441-462.
- Snow, David A. and Robert D. Benford. 1988. "Ideology, Frame Resonance and Participant Mobilization". *International Social Movement Research* 1: 197-219.
- Snow, David A. and Scott C. Byrd. 2007 "Ideology, Framing Processes, and Islamic Terrorist Movements". *Mobilization: An International Quarterly Review* 12 (1): 119-136.

- Thomas, Carole. 2008. "Interdiction du port du voile à l'école. Pratiques journalistiques et légitimation d'une solution législative à la française". *Politique et Sociétés* 27 (2): 41-71.
- Zeghib, Hocine. 2008. "La loi, le juge et les pratiques religieuses". *Actualité juridique. Edition droit administrative* 36: 1997-2002.