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Atheism and the Principle of *Laïcité* in France. A Shifting Process of Mutual Adaptation *

SUMMARY: 1. Introduction - 2. The Vertical and Horizontal Influences - 3. Atheism, *laïcité* and Church - 4. Atheism, *laïcité* and Islam - 5. Today's Popular Sources of Atheism - 6. Conclusion.

1 - Introduction

The legal issues of atheism in France might be accurately understood by considering the weigh of history on the French constitutional system. This is a system that has been constantly subject to the tension between the present and the past. More specifically, it seems to have been wrapped in its religious past yet proud of its commitment to anticlericalism and religious scepticism, whose content is being reinterpreted in the light of the challenges we face in today's rapidly evolving world. And, in this sense, it has made an important contribution to promotion of the so-called *laïcité de combat* (militant secularism)¹, which is not totally immune from some incongruities; such as those produced by the relation between constitutional objectives and actual policies².

During its history, and especially after the Great Revolution, the French legal system has indeed fluctuated within two opposing sides. Even today, although it supports a strict separation between State and religions, France observes several Catholic feasts as national holidays, which is an examples of the fact that in France the past appears to be in constant

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¹ **M. BARBIER**, *La laïcité*, Editions L'Harmattan, Paris, 1998; **J. BAUBEROT**, *Laïcité 1905-2005. Entre passion et raison*, Seuil, Paris, 2004.

² **J. ROBERT**, *Les fondements juridiques de la laïcité*, in *Revue Politique et Parlementaire*, 2006, pp. 6-12.



dialogue with the present. This is more evident in the light of the legal issues referring to the relationship between atheism and Catholicism, in both the individual and the collective (militant) sense of the terms.

A large number of atheistic organisations are active in campaigning on behalf of maintaining or even extending the principle of *laïcité*. In 2011, for example, twenty-six of them signed a *Manifeste des Associations et Organisations Laïques*³ calling for the full application of the 1905 famous law of separation between State and Churches⁴. They in particular rejected the proposal of Nicolas Sarkozy, the President of the Republic, who supported the idea of a new *laïcité positive* (positive secularism)⁵. These organizations varied greatly in scale and scope, but they mirrored the social and political footprint of traditional *laïcité*. The list contained several militant atheistic organisations, including masonic lodges, which were among the most energetic campaigners. It is important to underscore the fact that some commentators see freemasons as the real inventors of the *laïcité de combat*⁶, whose initial momentum may be deduced from the campaign in the late Nineteenth century for a secular public education. And, perhaps, it was not the case that during this campaign the *Ligue de l'Enseignement* - which had been founded in 1864 by freemasons and initially led by the educator and politician Jean Macé⁷ - played a crucial part in the reform of schools⁸.

On the other hand, in France the Roman Catholic Church, too, has continuously played an significant role in civil society and in politics, as is demonstrated by many historical and empirical indicators. This, however, cannot hide the fact that over the last decades there has been a decrease in

³ Association des Libres Penseurs de France, *Manifeste des Associations et Organisations laïques. Laïcité : pas de faux débats. Rien que la loi* (<http://www.libre-penseur-adlpf.com/article-manifeste-des-associations-et-organisations-laïques-70770213.html>; last accessed 10 September 2018).

⁴ *Loi du 9 décembre 1905 concernant la séparation des Églises et de l'État*, published on the *Journal officiel* (11 December 1905). See *ex plurimis* R.H. PENA, *La laïcité*, Flammarion, Paris, 2003; J. Baubérot, M. Wieviorka (Eds.), *De la séparation des Églises et de l'Etat à l'avenir de la laïcité*, l'Aube, Paris, 2005; R. RÉMOND, *L'invention de la laïcité française: de 1789 à demain*, Bayard, Paris, 2005; P. CABANEL, *Entre religions et laïcité: la voie française, XIXe-XXIe siècles*, Privat, Paris, 2007.

⁵ J. BAUBÉROT, *La Laïcité expliquée à Monsieur Sarkozy: ... et à ceux qui écrivent ses discours*, Albin, Paris, 2014.

⁶ J. Cortes (Ed.), *Les enjeux de la laïcité. A l'ère de la diversité culturelle planétaire*, GERFLINT, Paris, 2014, pp. 234-239.

⁷ J. GEORGE, *Laïcité XXIe siècle*, in *Cahiers pédagogiques*, 27 décembre 2003 (<http://www.cahiers-pedagogiques.com/Laïcité-XXIe-siècle>; last accessed 10 September 2018).

⁸ D. LIGOU, *Dictionnaire de la franc-maçonnerie*, PUF, Paris, 2006.



the number of Catholics who are not always active in religious practices. During this same period there has instead been an increase in the number of those who declare themselves Catholic more as a result of the culture of origin than for religious or spiritual reasons. These are groups of people who belong to a religion without believing in any divine force. Hence, in France it is not difficult to find persons who genuinely belong to the Catholic Church because with this religion and the relative values they 'feel at home'. Yet many of them do not believe in the existence of God.

For all these reasons, if you really want to understand the place and the role of atheism in France, you should likewise analyse the rapid evolution of the religious scenario in the Country as well as the constituencies of the principle of *laïcité*, which are strictly connected with the way of legally managing religious matters.

This is all the more important when considering some of the existing pressing processes, like those related to immigration and globalization. These are processes that in the last decades have introduced cultures holding religious worldviews other than those referring to the traditional beliefs, including Catholicism; which is exactly the case of Islam and Muslim organizations.

Islam is part of France's minorities with a robust religious and political character as well as a strong public expression. This seems to contradict the ideological representation of the French republicanism and the *laïcité* model⁹, intensely influenced by atheistic ideas and the relative (historical) manifestations¹⁰. In this sense, it should be remembered that France is a place where citizenship is at the centre of the theory and practice shaping the nation that, in turn, is based on republican secular individualism: those who have made a choice to become French citizen should assimilate, at least in their public behaviour, the Republic's secular principles¹¹.

At the same time, these principles aim at reducing the recognition of religious communities, their cultural and membership in public life. These principles also infer a strong accentuation of the freedom of speech and expression, which normally prevails over religions, sometimes justifying caricature of their divinities, rules, rites, and symbols. The example is given

⁹ **J. BAUBÉROT**, *Les sept laïcités françaises: Le modèle français de laïcité n'existe pas*, Maison des Sciences de l'Homme, Paris, 2015.

¹⁰ **P. WEIL**, *Why the French Laïcité Is Liberal*, in *Cardozo Law Review*, 2009, 30 (6), pp. 2699-2714.

¹¹ **M. TROPER**, *Sovereignty and Laïcité*, in *Constitutional Secularism in An Age of Religious Revival*, Edited by S. Mancini, M. Roselfeld, Oxford University Press, Oxford, 2013, p. 146.



by the famous case of *Charlie Hebdo*, the satirical magazine that, not by chance, functions as both a notorious outlet for mockery of religion and one of today's most popular components - i.e. expression - of the French militant atheism.

In the first part of the article, I will outline the legal issues involving the atheism in France, analysing them in the light of what I consider its two major streams of influences: the horizontal one, which historically arises from the effect of increasing worldwide travel with the discovery that people do not necessarily share the same values about the nature of human being; the other influence is based on the vertical arguments bubbling up from the history of the Western thought in a very form of scepticism and realism. The second part of the article is devoted to the relationship between the French atheism and the principle of *laïcité*. Here I will take into account the role played in this field by the 'old' religious traditions, like the Roman Catholic Church, and some 'new' conspicuous forms of religious affiliation, such as those related to Islam(s). In this manner, I will try to demonstrate that, since the Great Revolution, and especially after the Third Republic, *laïcité de combat* and atheism has been influencing each other in a constantly shifting process of mutual adaptation.

2 - The Vertical and Horizontal Influences

In his 1790 *Reflections on the Revolution in France*, Edmund Burke describes *La Révolution Française* as an attack against religion, which provided the most basic tenets to both society and civil government. When searching for a word with which to label this diabolical tendency, Burke found the term 'atheism' a natural choice. The term had indeed been used for over a century for virtually describing any political, philosophical, or even religious notion that dangerously challenged the *status quo*:

"We know, and it is our pride to know, that man is by his constitution a religious animal; that atheism is against, not only our reason, but our instincts; and that it cannot prevail long. But if, in the moment of riot and in a drunken delirium from the hot spirit drawn out of the alembic of hell, which in France is now so furiously boiling, we should uncover our nakedness by throwing off that Christian religion which has hitherto been our boast and comfort, and one great source of civilization amongst us and amongst many other nations, we are apprehensive (being well aware that the mind will not endure a void)



that some uncouth, pernicious, and degrading superstition might take place of it"¹².

It does not mean that atheism was the dominant subject of Burke's *Reflections*. It is in any case clear that it was a common stereotype for Burke and many of his French contemporaries.

For many aspects, they were right: atheism was one of the most important key factors of both the Enlightenment and the Great Revolution. Yet Burke and his French colleagues experienced major problems in defining what atheism really was. One thing was for sure, though: they went on to label atheism as a misconception and absurdity. Atheists are bigoted and fanatics, they usually said. The rigid dogmatism of these unbelievers would be the cause of the fall of the Revolution, they also claimed. In other terms, the revolutionaries preferred atheism to religion, and this was considered as the biggest threat to civilized society all over Europe.

Now, the discursive strategy of Burke and his contemporaries was clear enough. They reversed the accusations against the *ancien régime* by claiming that revolutionaries were devoted to new forms of dangerous superstition or, in Burke's words, "the superstition of the pretended philosopher of the hour" who, as atheists, "are not our [Burke's] preachers", just as "madmen are not our lawgivers"¹³. This also gave rise to an attempt to forcibly include the magmatic world of French atheism and its various facets in a single, comprehensive definition.

On the contrary, for other thinkers, the Enlightenment works of atheists (such as those referring to Voltaire, Rousseau, d'Alembert, Helvetius, Benedict Spinoza, Jean Meslier, Denis Diderot, and the Baron d'Holbach) were positive and essential contributions to modernity. In this sense, the Revolution marked a watershed moment in the history of atheism in France and in the Western legal system, being the first time that atheists actively participated in the public sector. In particular they contributed to delineate new roles for the State laws, including those related to fundamental rights and freedoms, like freedom of religion and expression.

In this sense, the Enlightenment and the Revolution were able to underscore two major streams of thought of the magmatic French atheism, which came from two principal sources. One was, if you like, horizontal influence arising from the effect of increasing worldwide travel with the

¹² E. BURKE, *Reflection of the Revolution in France* (1790), John Sharpe, London, 1819-21, pp. 126-127.

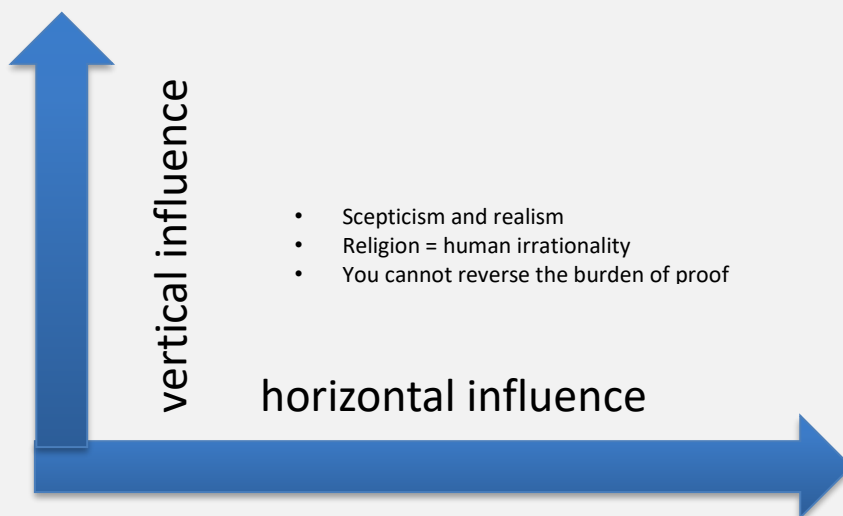
¹³ E. BURKE, *Reflection*, cit., above n. 12, pp. 58 and 119.



discovery that people do not necessary share the same views and beliefs about the nature of human being. There were other ways of thinking and new worlds where religion, in the Western sense of the term, had no place whatsoever (Table 1). But, along with this source, there was a vertical influence bubbling up from the past, from the history of Western civilization, in a very form of scepticism and realism¹⁴. In this case, religion was considered the invention of human being and, as Lucretius had said centuries before, fear was the mother of all gods¹⁵.

Religion was in other words regarded as a product of human irrationality. It was manly based on a philological construction, which was at the same time illogical and legally untenable. Believers, the atheists usually said, pretend to demonstrate the existence of God by reversing the burden of proof: by saying that for me god exists and it is up to you to explain and prove that he does not exist

Table 1



Now, through the Enlightenment and during the Great Revolution, these two streams of thought became both the primary antagonist of those favouring religious traditional views and the main supporter of a secular Republic.

¹⁴ **J. MILLER**, *One Thing and Another. Selected Writings 1954-2016*, Edited by Ian Greaves, Oberon Books, London, 2017, p. 156.

¹⁵ **R. FRENCH**, *Ancient Natural History. Histories of Nature*, Routledge, London, 2012, p. 125.



This becomes even more evident in the light of a fundamental historical tension around the question of *laïcité* (secularism), which in France seems to be trapped between two opposing forces. So, it is true that in its history France has battled to defend Catholicism: it still remains *la fille ainée de l'Église* (the eldest daughter of the Church)¹⁶. But it is also true that this Country has been natural home of atheism: so much so that, as we will soon see, nowadays France is the house of the world's largest populations of atheists.

In order to better illustrate these relations I would briefly mention the historical occurrences concerning two monuments, the construction of the Basilica of the Sacred Heart of Paris, commonly known as *Sacré-Cœur*, and the statue of the Chevalier de La Barre.¹⁷

As many know, François Lefebvre de la Barre was a young French nobleman. In 1765, he was tortured and beheaded before his body was burnt with Voltaire's philosophical dictionary. It is often said that La Barre was executed for not saluting a Catholic procession, which, in the eyes of his persecutors, was one of the main ingredients of his diabolic inclination.

The inspiration for the Sacré Cœur basilica originated on 4 September 1870, the day of the proclamation of the Third Republic, with a speech by Bishop Fournier who attributed the defeat of French troops during the Franco-Prussian War to a divine punishment after "a century of moral [secularist] decline". This is clearly shown by the Latin inscription at the base of the great mosaic within the Basilica. This building, it is written, is a gift from "France fervent, penitent and grateful to the Sacred Heart of Christ" (*Sacratissimo Cordi Jesu, Gallia Pœnitens et Devota et Grata*). The word 'penitent' has here a political connotation: it refers to the sins of French people, their tendency to support fake principles, like those expressed by the atheistic mood. For this reason, the Basilica was at that time an expression of a desire to return to the God of the Christians.

Ten years later, during one of the French Third Republic's moments of maximum splendour, the first set of Jules Ferry laws were passed. Here the dual system of State-Church schools, largely supported by the Roman Catholic authorities, was replaced by a public education system with lay schoolteachers¹⁸. It should be noted that the French anti-clerical campaign

¹⁶ J. BERGIN, *The Politics of Religion in Early Modern France*, Yale University Press, New Haven, 2014.

¹⁷ On this figure see the 1766 Voltaire's novel *Relation de la mort du chevalier de la Barre*, par M. Cassen, avocat au conseil du roi, à M. le marquis de Beccaria.

¹⁸ For example, article 2 of the *Loi du 28 mars 1882 sur l'enseignement primaire obligatoire* affirmed that "[t]he public primary schools will hold one day free, apart from Sunday,



gave an important contribution to this reform, which was also favoured by some atheist movements. From this point of view, Jules Ferry's laws can be seen as a prologue to the famous law of separation between State and Churches, which entered into force in 1905¹⁹, just when a statue of the Chevalier de La Barre was inaugurated (3 September) at the Congress of Freethinkers and placed at the gate of the *Sacré-Cœur*.

In 1926, the statue was moved away from the approach of the Basilica entrance to the nearby Square Nadar. It was then destroyed on October 1941 by the pro-religious Vichy regime, under which it is important to emphasize the attempt by Minister for Instruction to reinstate the Church's former role in French public schools²⁰. On February 2001, in the name of the principle of *laïcité*, the Paris City Council decided to erect a new statue of de La Barre at the Square Nadar.

3 - Atheism, *laïcité* and Church

The linkage of these facts and their sequence in time are able to highlight the historical tension between traditionalists and modernists. But they also make clear the way the French atheism has since the Great Revolution been supporting a peculiar conception of secularism. And, as I tried to explain before, this is done through vertical and horizontal sources of influence.

allowing parents to give, if they wish, their children a religious education outside from public school buildings. Religious education is optional in private schools (Les écoles primaires publiques vaqueront un jour par semaine, en outre du dimanche, afin de permettre aux parents de faire donner, s'ils le désirent, à leurs enfants, l'instruction religieuse, en dehors des édifices scolaires. L'enseignement religieux est facultative dans les écoles privées)" (translation mine). At the same time, article 3 of the 1882 law repealed the measures of sections 18 and 44 of the 15 March 1850 Falloux Law, which had given ministers of Catholic Church a right of inspection, supervision and management in public and private elementary schools and in the kindergartens. The 1882 law also annulled paragraph 2 of article 31 of the 1850 Falloux Law giving consistories the right to present teacher candidates belonging to non-Catholic religion. See P. OGNIER, *Une école sans Dieu? 1880-1895. L'invention d'une morale laïque sous la IIIe République*, Presses Universitaires du Mirail, Lyon, 2008; P. STOCK-MORTON, *Moral Education for a Secular Society: The Development of Moral Laïque in Nineteenth Century France*, State University of New York Press, New York, 1988, pp. 97-109.

¹⁹ J.-P. DELAHAYE, *Les francs-maçons et la laïcisation de l'école. Mythe et réalités*, in *Histoire de l'éducation*, 2006, 109, pp. 33-73.

²⁰ N. ATKIN, *Rallies and Resistants: Catholics in Vichy France, 1940-44*, in *Catholicism, Politics and Society in Twentieth-century France*, Edited by Kay Chadwick, Liverpool University Press, 2000, Liverpool, pp. 97-118.



Not only French atheists have inspired a philosophical conception of secularism by challenging the existence of God (vertical influence). They also have shaped and support a new role for the State's legal system into civil society (horizontal influence). Which is more evident when referring to issues of religious faith and the right of freedom *of* and *from* religion, as enshrined in the Constitution.

It is important to note that for the French law individuals normally acquire freedoms, including religious freedom, *through* the State and not only *from* the State. In the name of republican universal principles (*les principes fondateur de la République*), the State stresses the protection of the public order. As the French Constitutional Council has stated many times, those *principes* are informed by the so-called *bloc de constitutionnalité* (constitutional block), which includes:

- Article 1 of the 1958 Constitution, which expressly affirms the *laïcité*²¹;
- the 1789 *Déclaration des droits de l'homme et du citoyen* (Declaration of the Rights of Man and of the Citizen) where it is stated that "no one may be disturbed for his opinions, even religious ones, provided that their manifestation does not trouble the public order established by the law"²²;
- the Preamble to the 1946 Constitution;
- and, last but not least, other principles stated in some historical legislative rules, such as those referring to the 1905 law separating Churches and State, which is one of the most important legal pillars of the principle of *laïcité*²³.

In the light of what I said before, the constitutional block could be seen as a sort of legislative codification of the French atheism's attitude, under which the State law aims at treating all citizens alike, refusing to group them into ethnic or religious categories.

This explains, for example, the fact that in France it is illegal for public institutions to collect statistics referring to racial, religious or ethnic origin: thus, when in 2009 a government commissioner set up a group of

²¹ "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. Son organisation est décentralisée (France is 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. It is organised on a decentralized basis)" (translation mine).

²² Article 10 (translation mine).

²³ P. WEIL, *Why the French Laïcité*, cit, above n. 10.



researchers to find the best way to collect information in order to measure “cultural and religious diversity” in France, critics saw this data as an assault on the *principes fondateurs de notre République*²⁴. But this also explains some laws capable of intervening against certain religious “sects”, especially those promoting values that conflict with France’s egalitarian universalism²⁵.

Meticulously linked to the concept of *citoyenneté* (citizenship), in France the principle of *laïcité* designates not only a historical process of emancipation of the State’s institutions from religious authorities, but also moral-pedagogical goals, actively pursued by the law and fostered by the French philosophical-political tradition, in which the atheism has played a very important role.

In this sense, since the 1789 Revolution, and above all after the period of the Third Republic, the principle of *laïcité* has been used as a machinery of governance: as a way for promoting the ideal of French national tradition, deeply connected with some universal notions, such as *citoyenneté* and *droits de l’homme*²⁶. These elements have given a solid character to the famous René Rémond’s statement: since the 1789 Great Revolution, unable to ignore each other, the spheres of “religion and French nation have often opposed each other”²⁷.

From this point of view, the French atheists have turned the cathedral of Paris into a temple of secularism, whose structure is illuminated by the light of reason. Through this stream of thought, many French atheists have then kept reinventing a sort of civil religion, mainly based on *one reason for all*. It is as if they have been able to replace dynastic religious absolutism with the absolute supreme value of reason.

During the Eighteenth and Nineteenth centuries, a sort of spiritual dimension of the French atheism was thus translated into the belief in

²⁴ See **THE ECONOMIST**, *To count or not to count. A new effort to gather data on ethnic origins is stirring up a fuss*, March 26, 2009.

²⁵ See the *loi n° 2001-504 du 12 juin 2001 tendant à renforcer la prévention et la répression des mouvements sectaires portant atteinte aux droits de l’homme et aux libertés fondamentale*. See **J.M. WOEHRLING**, *Une définition juridique des sectes*, in *Les “sectes” et le droit en France*, edited by F. Messner, PUF, Paris, 1999, pp. 63-90.

²⁶ **E. ZOLLER**, *La Laïcité aux Etats-Unis ou la Séparation des Eglises et de l’Etat dans la Société Pluraliste*, in *La Conception Américaine de la Laïcité*, Edited by E. Zoller, Dalloz-Sirey, Paris, 2005, p. 4; **H. PARIS**, *Communautarisme et laïcité*, in *Revue Politique et Parlementaire*, 2006, 108, p. 60.

²⁷ **R. REMONDE**, *Religion et société en Europe. Essai sur la sécularisation des sociétés européennes au XIX^e et XX^e siècles (1789-2000)*, Seuil, Paris, 2001, p. 53 (translation mine).



human action, supporting a vision of universe without God: “[r]eligion was to be dethroned through intellectual demolition and social privatisation, leading to the modern mutually parasitic dualism of the secular and the religious”.²⁸ Furthermore, the theory and practice of life in society and the State law were elevated to a religion, as demonstrated by Jean-Jacques Rousseau, one of the greatest apostles of the 1789 Revolution,²⁹ whose ideas of the general will and the sovereignty aimed at forcing people “to be free”³⁰. And, perhaps, it is not by chance that these ideas drew their “being wholly from the sanctity of the [social] contract”³¹ and the civil religion, whose dogmas “ought to be few, simple, and exactly worded, without explanation or commentary”:

“[t]he existence of a mighty, intelligent and beneficent Divinity, possessed of foresight and providence, the life to come, the happiness of the just, the punishment of the wicked, the sanctity of the social contract and the laws: these are its positive dogmas”³².

Without renouncing the habit of metaphysical and mystic abstractions, it seems that Rousseau wanted to propose a ‘religious’ version of the French atheism,³³ which later was due to take place at the service of the pedagogical figure of secular citizen³⁴. This explains why since the French Revolution,

²⁸ **V. GEOGHEGAN**, *Utopia, Religion and Memory*, in *Journal of Political Ideologies*, 2007, 12, p. 261.

²⁹ See **I. BERLIN**: *Freedom and Its Betrayal. Six Enemies of Human Liberty*, Princeton University Press, Princeton, 2003, pp. 27-49; *Political Ideas in the Romantic Age*, Princeton University Press, Princeton, 2006; *Two Concept of Liberty*, in *Four Essays on Liberty*, Oxford University Press, Oxford, 1969, pp. 118-172.

³⁰ **JEAN-JACQUES ROUSSEAU**, *The Social Contract or Principles of Political Right* (first published in 1762), Book I, Chapter VII, *The Sovereign*, Bartleby, New York, 2010 p. 8.

³¹ ³¹ **JEAN-JACQUES ROUSSEAU**, *The Social Contract*, cit., p. 3.

³² **JEAN-JACQUES ROUSSEAU**, *The Social Contract*, cit., above n. 31, Book IV, Chapter VIII, *Civil Religion*, p. 15.

³³ **H. DE VRIES**, *Introduction: Before, around, and beyond the theologopolitical*, in *Political Theologies: Public Religions in a Post-Secular World*, edited by H. de Vries and L.E. Sullivan, Fordham University Press, New York, 2006, pp. 1-88; **V. GEOGHEGAN**, *Religious Narrative, Post-Secularism and Utopia*, in *Critical Review of International Social and Political Philosophy*, 2000, no. 3, pp. 205-224.

³⁴ For some Authors this was also placed at the service of the ideal of leviathan State and its collective divinities: nation, demos, race, political party, leader, etc.: see **M. GAUCHET**, *Le désenchantement du monde. Une histoire politique de la religion*, Gallimard, Paris, 1985, p. 35. In this sense, it is very interesting what **BERTRAND RUSSELL** wrote in his *History of Western Philosophy*, first published in 1945, New York, London, Toronto, Sydney, Simon and Schuster, 2008, p. 684: “Jean-Jacques Rousseau [...] though a



and especially after the Third Republic, public school has been conceived as an important place to set about the values endorsing the Republic's general principles, starting from those referring to secularism and citizenships. One of the most important and recent examples of that is the debate over religious symbols, which, not by chance, has been inflamed under today's irresistible process of immigration.

The trend started in the late 1980s, when the question of religious symbols flowed into the *Kherouaa* case, issued by the State Council on 2 November 1992, and, after that, into all circumstances underpinning the 2004 famous *Loi no. 2004-228*³⁵. As one can easily argue from its title, this law aims at enforcing the French secularism. It pursues this goal by forbidding the wearing of conspicuous symbols, which manifests a religious belonging in public (i.e. government-operated) primary and secondary schools. From a strictly legal point of view, the 2004 law is an amendment to the French Code of education, which expands some rights and principles enshrined in the *bloc de constitutionnalité*: namely the right to freedom of thought, conscience and religion as well as the principle of the equal respect for all cultures and beliefs. These are constitutional provisions that have to be understood in the light of the French secularism implying the rigid separation of the State from faithful activities. It means that now the French *laïcité* should be not only affirmed but also reinforced. And this is because at the moment the Country's religious landscape is in the process of being changed dramatically.

In the light of a today's new religious scenario, the French *laïcité* is in other words perceived as defending the secular principle of the Republic, which also implies the protection of individual and their human rights

philosophe in the eighteenth-century French sense, was not what would now be called a 'philosopher'. Nevertheless he had a powerful influence on philosophy, as on literature and taste and manners and politics [...]. He is the father of the romantic movement, the initiator of systems of thought which infer non-human facts from human emotions, and the inventor of the political philosophy of pseudo-democratic dictatorships as opposed to traditional absolute monarchies". See also p. 700: "[t]he *Social Contract* became the Bible of most of the leaders in the French Revolution, but no doubt, as is the fate of Bibles, it was not carefully read and was still less understood by many of its disciples. It reintroduced the habit of metaphysical abstractions among the theorist of democracy, and by its doctrine of the general will it made possible the mystic identification of a leader with his people, which has no need of confirmation by so mundane an apparatus as the ballot-box".

³⁵ *Loi encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics*. See *ex plurimis* **B. BASDEVANT-GAUDEMET**, *Commentaire de la loi du 15 mars 2004*, in *Quaderni di diritto e politica ecclesiastica*, 2004, no. 2, pp. 407-420.



against the intrusion of religious groups. Hence, in the relationship between individuals, religious groups and the State law, the latter appears as safeguarding weaker and more vulnerable persons against any (potential and concrete) pressure from religious communities.

This inflection of the principle of *laïcité* is clearly reflected in the initiative of the 2009 National Mission for Information on veils covering the face and body,³⁶ which drafted a bill approved by the French Parliament one year later³⁷. In this case, the law aimed at forbidding the so-called *burqa* in all public areas, including urban ones, such as roads, squares, parks. And, once again, this was precisely because that practice clashed with the «basic values of our Republic, as expressed in our [French] motto: “Liberty, Equality, Fraternity”»³⁸.

Yet, all these acts and the relative attitudes demonstrate the difficulty of the French secularism model to face today’s religious pluralism-diversity. It is as if, instead of pursuing a harmonious coexistence, the classical legal instruments implementing the principle of *laïcité* alimments serious tensions between secular law and some religious groups, namely the Muslim ones³⁹.

4 - Atheism, *laïcité* and Islam

³⁶ **É. RAOULT**, *Rapport d’information fait en application de l’article 145 du Règlement au nom de la Mission d’information sur la pratique du port du voile intégral sur le territoire national* (<http://www.assemblee-nationale.fr/13/rap-info/i2262.asp>; last accessed 10 September 2018).

³⁷ LOI n° 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l’espace public.

³⁸ **É. RAOULT**, *Rapport d’information cit.*, above n. 37. On this see also the Decision of the French Constitutional Council, *Décision n° 2010-613 DC du 7 octobre 2010* (<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022911681&categorieLien=cid>; last accessed 10 September 2018).

³⁹ For example, according to the Collective Against Islamophobia, all these bans are clear manifestations of discrimination against women’s individual rights girls’ rights to wear the headscarf in public schools and women’s rights to wear *burqa* in open spaces and, therefore, against a particular religious belief, Islam. See **COLLECTIVE AGAINST ISLAMOPHOBIA**, *Le bilan de la loi du 15 mars 2004 et de ses effets pervers* (in http://www.islamlaicite.org/IMG/pdf/CCIF-Bilan_loi_du_15_mars_et_effets_pervers.Pdf; last accessed 10 September 2018); **D. BARTON**, *Is the French Burka Ban Compatible with International Human Rights Law Standards?*, in *Essex Human Rights Review*, 2012, 9(1), pp. 1-27.



The changes within the French religious scenario do not involve only Islam and Muslims. Nevertheless, given its specificity (when compared to religions that have long been present in France) and some problematic issues (including the emergence of religiously inspired terrorism), Islam highlights the most striking aspects of today's *laïcité*. In particular, it stresses the issues referring to religious freedoms, including freedom of non-believers to express their ideas, even when they are intended to challenge the validity of some religions and their basic tenets: the existence of God, the rationality of some precepts, the veracity of faithful dogmas, the powers of religious authorities, the roles of religions in the public spaces.

Islam has in other words become the discursive substitute for cultural pluralism and *laïcité*, which implies other sensitive matters that, in a way or another, are correlated to religions and their position within a *laïque* democracy. Gender roles, clothing codes, family models, debates on bioethical questions, the relationship between religion and politics are the most conspicuous examples of that. Along with these issues, Islam has become the most extreme case of *other* religious groups, other than traditional ones⁴⁰.

In this sense, we have to stress that the French model of secularism does not imply the same attitude towards all religious organizations: that risks becoming a simple caricature or, at least, a truncated version of the principle of *laïcité*. In the matter of education, for example, many Catholic institutions are sponsored by the State. In this case, the State normally supports, financially speaking, religious schools more than Italian or German governments usually do⁴¹. How can this be explained? In France this is largely due to the fact that, as traditional Churches, some religious denominations continue to play important role for both social stability and political legitimacy⁴².

That, however, cannot hide the fact that religious practice among Catholics has significantly dropped off in the last fifty years, with 57% of

⁴⁰ Cf. **M.-C. LUTRAND, B. YAZDEKHASTI**, *Laïcité et présence musulmane en France: des dynamiques d'influence réciproque*, in *Cahiers de la Méditerranée*, 2011, 83, pp. 327-335.

⁴¹ **J-LOUIS SCHLEGEL**, *L'Église catholique de France et la laïcité*, in *Revue Politique et Parlementaire*, 2006, 1, p. 67; **J. DUSSEAU**, *L'histoire de la Séparation entre permanence et ruptures*, in *Revue Politique et Parlementaire*, 2006, 1, p. 1.

⁴² Although it is a secular State, and even considering the history of religious conflict in France, few French want religion eliminated from their Country. See **F. BRANCACCIO**, *La laïcité, une notion chrétienne*, Paris, Editions du Cerf, 2017; **J. LAURENCE**, *Laïcité Without Égalité. Can France Be Multicultural?*, in *Foreign Affairs*, 18 November 2015 (<https://www.foreignaffairs.com/articles/france/2015-11-18/la-cit-without-galit>; last accessed 10 September 2018).



them self-identifying as non-practicing believers, only 4.5% attending weekly mass. And if you ask these people “are you Catholic?”, they would probably reply “yes for cultural origin, but I do not believe in god, so I actually am an atheist”.

At the same time, that cannot hide the fact that the population without religion in France is the second largest grouping. And even though the composition of the atheist world is not always clearly defined in the different surveys - it is difficult to know exactly how many within this world are unbelievers (without God), agnostics (unsure if God exists), or theists (believing in God but without belonging to a religion) - the number of the French atheists is markedly growing.

Moreover, all of this - including the laws banning Muslims signs from public spaces - cannot remove the fact, which even the casual tourist notices, of how multi-ethnic and multi-cultural France is at the moment. Similarly, this cannot eliminate another important circumstance: only few non-white Muslim people have top jobs in France. So, in France many do not like it when an immigrant describes himself as black or Muslim, because they say that skin colour and religious belonging do not count in the light of the Republic’s principles. In reality, many times it appears an absolute hypocrisy: several immigrants remain blacks and Muslims in the eyes of the French authorities or employers. Which underlines the eminent socio-economic issues that one has to take into serious account in order to understand the practical way the French citizenship and the principle of *laïcité* really perform in today’s civil society⁴³.

The economic and social conditions affecting the neo-religious groups, mainly composed of Muslim immigrants, lead their members to consider the universal conceptions of citizenships and secularism as instruments for submitting minorities to the majority’s law: this is a law that favour some religious groups and their adherents, they normally say. In this sense, the uniformity of human rights and citizenship is sometimes seen as synonym to inequality or, worst, as legal means to conceal the *de facto*

⁴³ In 2017 the *Institut national de la statistique et des études économiques* - INSEE (the French National Institute of Statistics and Economic Studies) reports that approximately 7.3 million people born in France had at least one immigrant parent, representing 11 percent of the total French population in 2015. Among this, thirty-five percent are from the Sunni Muslim-majority countries, precisely from Algeria (15%), Morocco (11%), Tunisia (5%) and Turkey (4%). See C. BRUTEL, *Être né en France d’un parent immigré. Une population diverse reflétant l’histoire des flux migratoires*, in *INSEE Première*, 8 February 2017 (<https://www.insee.fr/fr/statistiques/2575541#tableau-Figure1>; last accessed 10 September 2018).



inequalities (*inégalités de fait*)⁴⁴. And in the eyes of many Muslims these privileged people are often assimilated to the large part of French atheists who, moreover, are regarded as the main supporters of the *laïcité de combat*; what, as I said, many Muslims see as one of the legal sources that, in a way of another, helps to legitimize socio-economic discriminations against them⁴⁵.

Hence, the problems caused by the relationship between French secularism and some neo religious groups could be interpreted as an external manifestation of deeper and broader socio-political claims. These are claims that often seep through into the Islamic creed and its relative precepts, giving them strong religious nuances. And it is not surprising that this is even more evident in the field of education that, as we saw, since the Third Republic has been portrayed as a bastion of the *laïcité de combat*.

5 - Today's Popular Sources of Atheism

These examples highlight the peculiar characteristics of the French *laïcité*, under which the law promotes the atheistic arguments for a secular democracy, where the freedom of religion should be substantially relegated to the private sphere. Now, the problem is that this perspective becomes problematic within the existing religious scenario. Which becomes even more challenging in the light of both the new increasingly aggressive religious claims and the constitutionalization of religious freedom that, in order to avoid unreasonable discriminations, should be used to accommodate different practices and beliefs. From here some new issues involving today's forms of the French atheism inevitably stem.

In particular, those issues are inflamed by the contrast between those who continue to support the atheistic idea of the *laïcité de combat* and those who sustain religious-traditional views, which are now sponsored by some important religious organizations: not only associations referring to Catholicism and other traditional Churches, but also those related to the 'new' strong religious actors, like Islam(s). For these reasons, most of the current questions involving atheism imply the relation between three main factors:

⁴⁴ F. MAYANTHI, *The Republic Unsettled: Muslim French and the Contradictions of Secularis*, Duke University Press, Durham- NC, 2014.

⁴⁵ M. LAZREG, *Questioning the Veil, Open letters to Muslim Women*, Princeton University Press, Princeton, 2009, p. 88.



- the identity of the historical French national secularism;
- the presence of some 'different' (from the past) conspicuous forms of religious affiliation;
- the exercise of some universal human rights, including the right to freedom of thought, conscience, religion, opinion and security.

Indeed, this relation may help us understanding the reasons for the success of some existing forms of the French atheism, like those embodied by *Charlie Hebdo*.

Since the end of World War II, the pluralistic development of the society has led the French legislator to give some offenses a religious dimension⁴⁶. This means that, on the basis of some provisions, someone may be legally prevented from behaving in a certain manner or expressing opinions against a person or group of people on account of their religious affiliation. Nonetheless, even though the case laws concerning the freedom of expression have multiplied in recent years, it remains difficult to apply those provisions when related to religious matters⁴⁷. This is essentially due to some main factors, namely:

⁴⁶ From here stem, for example, the new provisions of the Criminal Code, which states that "[w]here provided by law, the penalties incurred for a felony or a misdemeanour are increased when the offence is committed because of the victim's actual or supposed membership or non-membership of a given ethnic group, nation, race or religion". In cases like these, the aggravating circumstances "are established when the offence is preceded, accompanied or followed by written or spoken words, images, objects or actions of whatever nature which damage the honour or the reputation of the victim, or a group of persons to which the victim belongs, on account of their actual or supposed membership or non-membership of a given ethnic group, nation, race or religion" (*Code criminelle*, Article 132-76). Likewise, the defamation, the insult, or the incitement "committed in private, to discrimination against or hatred or violence towards a person or a group of people on account of their origin or their actual or supposed membership or non-membership of a particular ethnic group, nation, race, or religion shall carry the fine for fourth-class summary offences" (*Code criminelle*, Articles R. 624-3, R. R. 624-4, R. 624-7; Decree no. 2005-284 of march 20155). See also Section 14 of the Act no. 90-615 of 13 July 1990 punishing all racist, anti-Semitic and xenophobic acts (amendment to Section 6 of the Act no. 82-652 of 29 July 1982): "[t]he Act allow associations working to counter racial and religious discrimination to exercise the right of reply in the audio-visual sector". And, of course, see also the law of 29 July 1881 on the freedom of press (*loi du 29 juillet 1881 sur la liberté de la presse*), in particular Articles 24, 33, 34, and 48, as modified by the law no. 72-546 of 1 July 1972.

⁴⁷ E. DERIEUX, *Diffamation, injures et convictions en procès*, in *Annuaire Droit et Religion*, 2005, p. 107.



- the very general nature of those provisions, which do not give precise qualifications to offences based on religion;
- the remarkable, increasingly importance of the freedom of expression, which normally prevails over religious claims;
- the principle of *laïcité*, which aims at reducing the role of religions and religious denominations, especially in public spaces⁴⁸.

This explains the attitude of the French Judges when some contested expressions are entitled to be treated - i.e. defined - as distinctly manifestations of satire.

In France, the religious satire has emerged through a long tradition of atheism, which has resisted all the upheavals and misfortunes, including form of censorship that, during the history of the French legal system, has exerted direct and indirect pressure. On the contrary, in the current legal system protection of satire, including satire against religions and their basic tenets, is mainly based on some constitutional rules, such as those related to the freedom of opinion⁴⁹, the freedom of press⁵⁰, and the principle of democratic pluralism⁵¹. All of this may help to better comprehend the famous affaire of *Charlie Hebdo's* cartoons; insofar as it demonstrates that in today's French legal context there is a strict relationship of cause and effect between the freedom of expression, the right of satire, and the principle of *laïcité*.

The case is well known and it can be summarized into a question: can *Charlie Hebdo's* cartoons (published on February 2006) caricaturing Islam be considered offensive and demeaning? It should be first noted that, in reality, the case began in Denmark on 30 September 2005, when Jørn Mikkelsen, one of the editors of *Jyllands-Posten*, a conservative newspaper, discovered that no cartoonist wanted to illustrate his children books titled "Life of Muhammad". For this reason, Mikkelsen made a public appeal to "all cartoonists of goodwill". He received in return 12 cartoons that the *Jyllands-Posten* decided to publish⁵².

⁴⁸ L.N. GREEN, *Religion et ethnicité. De la comparaison spatiale et temporelle*, in *Annales*, 2002, no. 57, p. 127; D. DIGNAN, *Europe's Melting Pot: A Century of Large-scale Immigration into France*, in *Ethnic and Racial Studies*, 1981, p. 137; L.N. GREEN, *Filling the Void: Immigration to France before World War I*, in *Labor Migration in the Atlantic Economies*, edited by D. Hoerder, Greenwood Press, Westport, 1985, p. 143.

⁴⁹ Articles 10 and 11 of the 1789 Declaration.

⁵⁰ See on this the *loi du juillet 1881 sur la liberté de la presse*.

⁵¹ As affirmed, among others, by Article 34 of the 1958 Constitution, para. 1.

⁵² L. LANGER, *Religious Offence and Human Rights: The Implications of Defamation of*



Now, as many know Islam forbids the representation of both God and the Great Prophet, in part because of strong warnings in the *Qu'ran* and other religious texts against idolatry or anything that could be seen as a pathway towards idolatry. In addition, some of those cartoons traced similarities between Islam and religiously inspired terrorism, principally with reference to *al-Qaeda*. As a result, the protests of national and supranational Muslim organizations came out vigorously.

These protests led the Danish Prime Minister, Anders Fogh Rasmussen, to distance himself from the cartoons and the editor of *Jyllands-Posten* to apologize for having caused offence to Muslims around the world. Instead, a year later *Charlie Hebdo* chose to support freedom of expression, republishing the cartoons incriminated. As a consequence, the Union of Islamic Organisations of France (UOIF) and the Great Mosque of Paris complained that the weekly magazine made public offences against a group of persons because of their religious belonging; offenses that, under the French law, might have been punished at least by six months of imprisonment and a fine⁵³.

Now, from a legal point of view, this case is focused on the balance between two fundamental freedoms, the freedom of worship and the freedom of expression. These are two freedoms that in a constitutional democracy have to coexist peacefully, without oppression of one over the other. This is even more necessary in a multicultural context, where there are different religions and traditions. Yet we should not forget that the aim at accomplishing this balance is never neutral. It reflects unexpressed assumptions that affect the practical, legal outcome⁵⁴.

So far as the case of *Charlie Hebdo* is concerned, if we chose to favour the right of satire - because, for example, we consider it important for pluralism and the development of the social consciousness - the religious experience, as any other experiences, must be subject to the freedom of expression. If, on the contrary, we decide to focus our attention on the *favour religionis*, in the sense that we consider religion and religious denominations objects of particular protection, the expression of satire would be lawful only in so far showing respect towards religions and their basic tenets: this

Religions, Cambridge University Press, Cambridge, 2014, pp. 4-5 and pp. 51-56.

⁵³ For more details see **F. ALICINO**, *Freedom of Expression, Laïcité, and Islam in France: The Tension between Two Different (Universal) Perspectives*, in *Islam and Christian-Muslim Relations*, 2015, pp. 1-26.

⁵⁴ **P. MBONGO**, *Hate Speech, Extreme Speech, and Collective Defamation in French Law*, in *Extreme Speech and Democracy*, Edited by I. Hare, J. Weinstein, Oxford Scholarship Online, Oxford, 2009, pp. 235-236.



would not only result in the reduction of the role of satire; this would also make eligible a penal legislation safeguarding religion and religious denominations⁵⁵. In short, depending on the essential characteristics of a given legal system, the balance would tilt towards the right of satire or towards the *favor religionis*.

In the eyes of the complainants, the cartoons published by *Charlie Hebdo* are deliberate acts of aggression, which aim at hurting Muslim people, their attachment to Islam and the *al-umma al-islāmiyya* (community of Muslims). One can easily note that the classical communitarian repertoire characterizes this indictment. It is in effect based on the demand of a social group and their adherents to have the right of derogating general law, in the name of their religious diversity. On the other hand, the principle of *laïcité*, which emphasises the neutrality and the indivisibility of the State's law, gives freedom of expression a peculiar protection, which translates into a particular safeguard of the right of satire⁵⁶. These are the main characters of the French secularism that, under the pressing pressure exercised by the French atheism movements, is normally opposed to the communitarian perspective⁵⁷.

So, the inclination of the French secularism model made more predictable the decision of the Judges that, not for nothing, referred to the dispositions stated by the 1958 Constitution. In particular, the Court affirmed that the French constitutional democracy implies the protection of freedom of expression and, in particular, the right to express ideas, including those "that offend, shock, or disturb". France is a secular and pluralistic society, where respect for all beliefs should be associated with the freedom to criticize religions, including Islam, they added. Besides, the cartoons were not gratuitously offensive. Instead, they were capable "of favouring the debate about the nature and the scope of the Islamic terrorism"⁵⁸. Finally, the Court considered the media context within which the cartoons were published.

In other words, *Charlie Hebdo* is a satirical magazine, containing many caricatures, which no one is forced to buy or read. The circumstances of this publication operate as jokes that bypass censorship, using irony as

⁵⁵ N. COLAIANNI, *Diritto di satira e libertà di religione*, in *Stato, Chiese e pluralismo confessionale*, Rivista telematica (www.statoechiese.it), May 2008, pp. 3-4.

⁵⁶ T. JEANTET, *L'école et la laïcité*, in *Revue Politique et Parlementaire*, 2006, no. 1, p. 29.

⁵⁷ J-LOUIS SCHLEGEL, *L'Église catholique de France et la laïcité*, *Revue Politique et Parlementaire*, 2006, no. 1, p. 67.

⁵⁸ *Tribunal correctionnel de Paris*, 22 March 2007.



an instrument of social and political criticism. *Charlie Hebdo* is deliberately provocative, what allows it to give force and substance to the freedom of expression in an openly satirical milieu⁵⁹ that, on the other hand, does not focus the attention only on Islam and religious beliefs⁶⁰.

For all these reasons, the Judges acquitted *Charlie Hebdo* of the accusations. Under the French law, the right of satire is an integral part of the freedom of expression, they said: this right is highly guaranteed by the Constitution and, therefore, must prevail over some religious claims⁶¹. The Court concluded that, although the character of that caricature may be shocking, even insulting, the context and the circumstances of its publication in the paper *Charlie Hebdo* arose independently of any deliberate intention to directly and gratuitously offend people of Muslim creed. This means that the acceptable limits of freedom of expression had not been exceeded.

This seems to be part of the current trend of the European Union laws. Suffice to mention the *EU Guidelines on the promotion and protection of freedom of religion or belief*, where it is expressly stated: “international human rights law protects individuals, not Religion or Belief *per se*”. It implies that “protecting a religion or belief may not be used to justify or condone a restriction or violation of human rights”, including those referring to freedom of expression. Thus, the European Union recommends “the decriminalisation of offences concerning religious beliefs”, because “they can have a serious inhibiting effect on freedom of expression”⁶².

⁵⁹ E. DERIEUX, *L'affaire des « Caricatures de Mahomet » : liberté de caricature et respect des croyances*, in *La Semaine juridique, Edition Générale*, 9 May 2007, 19, pp. 10078-10079.

⁶⁰ This is clearly confirmed by the results of the research by J.-F. MIGNOT, C. GOFFETTE, *Non, « Charlie Hebdo » n'est pas obsédé par l'islam*, in *Le Monde*, 25 February 2015 (https://www.lemonde.fr/idees/article/2015/02/24/non-charlie-hebdo-n-est-pas-obsede-par-l-islam_4582419_3232.html; last accessed 25 September 2018). See also M. LEVANT, *Il mito dell'islamofobia. Uno sguardo storico sulla caricatura religiosa in Charlie Hebdo*, in *Blasfemia, diritti e libertà. Una riflessione dopo le stragi di Parigi*, Edited by A. Melloni, F. Cadeddu, F. Meloni, il Mulino, Bologna, 2016, pp. 147-184.

⁶¹ P. MBOMGO, *Les caricatures de Mahomet et la liberté d'expression*, in *Esprit*, 5 May 2007. See also *Tribunal de Grande Instance de Paris, ordonnance de référé du 10 mars 2005; Cassation civ. (1^{er} Chambre), Sté GIP c. Associacion Croyances et Liberté et autres*, 14 November 2006.

⁶² Council of the European Union, *EU Guidelines on the promotion and protection of freedom of religion or belief*, Foreign Affairs Council meeting, Luxembourg, 24 June 2013 (<https://eeas.europa.eu/sites/eeas/files/137585.pdf>; last accessed 20 September 2018). See also the European Parliament, *Recommendation to the Council of 13 June 2013 on the draft EU Guidelines on the Promotion and Protection of Freedom of Religion or Belief (2013/2082(INI))*, in *Official Journal of the European Union*, 19.2.2016, C 65/175-179.



On the other hand, all of this seems to confirm the fact that the atheistic associations continue to protest against the blasphemy laws, even though in Europe and in the West the implementation of this kind of law is visibly close to zero. In other words, the blasphemy law has become a relic of past⁶³, which is even more so in France. The case of *Charlie Hebdo* is one of the most important examples of that.

It is sure that *Charlie Hebdo* is not the most important component of the French atheism. But, for the above-mentioned reasons, it is now one of the most popular. This is due not only because of *Cartoon* case-law or the terrorist assaults that killed 17 people in Paris in January 2015, including an attack on the headquarters of the satirical magazine. This is also because the content of *Charlie Hebdo* aims at striking two different targets. It deliberately intends to contrast the power of some authorities, including the religious ones. At the same time, it ridicules the basic tenets of religions, including those referring to Islam. In this manner, *Charlie Hebdo* is able to update and sum up two historical streams of thought of the French atheism, its vertical influence and its horizontal action⁶⁴.

On one hand, *Charlie Hebdo* challenges the powers and the privileges of the most preeminent religious authorities (horizontal action). On the other, it puts into question the existence of all Gods, by simple making a mockery of their basic tenets (vertical influence).

And we should not underestimate the fact that *Charlie Hebdo* does 'its dirty work' through a simple funny language. This is a language that normally avoids intellectual efforts, as normally requested by some forms of contemporary atheism. And this leads us to the current situation of the French atheism that, with the help of the existing forms of anticlericalism and religious scepticism, for the first time in its long history is becoming a very popular social phenomenon; just as it was the Catholicism until few decades ago⁶⁵.

We would better say that, in the light of this non-religious scenario, atheism in France risk becoming very popular. And, indeed, we say this in

⁶³ M. GATTI, *La blasfemia nel diritto europeo: un "reperto storico"*, in *Blasfemia, diritti e libertà. Una riflessione dopo le stragi di Parigi*, above n. 61, pp. 185-204.

⁶⁴ See *supra*, par. 2.

⁶⁵ See Institute Montaigne Rapport Septembre, *Un islam française est possible* (http://www.institutmontaigne.org/ressources/pdfs/publications/rapport-un-islam-francais-est_possible.pdf; last accessed 10 September 2018). See also Pew-Templeton. *Global Religious Future Project* (http://www.globalreligiousfutures.org/countries/france#/?affiliations_religion_id=0&affiliations_year=2010®ion_name=All%20Countries&restrictions_year=2015; last accessed 10 September 2018).



the light of the recent history of Catholicism, which has shown that sometimes success is much more difficult to manage than failure.

6 - Conclusion

France has a long history of criticism of religion. Many philosophes of the Enlightenment have provided the standard anthology of classical writings of atheism. One of them is the 1763 *Treatise on Tolerance* by Voltaire, whose sales increased rapidly in the aftermath of the 2015 *Charlie Hebdo* terrorist attack⁶⁶.

It should be said that, as already noted in relation to Rousseau's *Du contrat social*, the leading philosophes mainly wrote from a deist position. Or, at least, their writings continued to be based on transcendental (sometime mystical) elements and, as such, they were constantly looking for an eschatological meaning, an infallible order, and a supreme law. In the light of these considerations, Michel Onfray has provided a distinction between the genuine atheists, who call into question the existence of divine forces, and the deists, pantheists, agnostics who cannot take the final step of disbelief. Even for this reason, Onfray's work is particularly useful for understanding the strong undercurrent of many atheism organisations in the republican tradition⁶⁷.

We should underscore that this tradition includes the revered associations, such as the *Ligue des droits de l'homme*, which was founded during the Dreyfus Affair and has campaigned for human rights up to the present day. In addition, atheism remains an influential strand in several political organisations, particularly those with left-wing inclinations, though it is also present in centrist movements, in the tradition of the old Radical Party, and even in some parts of the right-wing movements. At the same time, and with a multi-faceted and articulated view, atheism has also been promoted by a number of organisations devoted more specifically to arguing the case for non-belief and for its political expression in *laïcité*.

On the other hand, another important part of the French population stresses the strict interpretation of the principle of secularism. One of the

⁶⁶ J. DUGDALE, *Voltaire's Treatise on Tolerance Becomes Bestseller Following Paris attacks*, in *The Guardian*, 16 January 2015 (<https://www.theguardian.com/books/2015/jan/16/voltaire-treatise-tolerance-besteller-paris-attack>; last accessed 10 September 2018).

⁶⁷ M. ONFRAY, *Traité d'athéologie*, Livre de Poche, Paris, 2005; see also the English version (translated by J. Leggatt), *Atheist Manifesto: The Case Against Christianity, Judaism, and Islam*, Arcade Publishing, New York, 2007.



most recent examples of that is given by the statements Emmanuele Macron made at *College des Bernardins* in Paris on April 9, 2018, during a public meeting with the Conference of Bishops of France. The President of the Republic recognized the important part that Catholicism has played in the cultural evolution of the Country as well as the key role that it still has in collective life. This is particularly evident in relation to helping those in practical need, he added. For this reason, Macron outlined the French secularism, whose strict interpretation have been damaged in France: the *laïcité* cannot be opposed to religion; maintaining and promoting secular democracy does not mean denying faith, he said⁶⁸. This seems to be in line with the words of Régis Debray, according to whom

«the Republic, quite properly, does not *recognise* any religion. Should it, for all of that, fail to take *cognizance* of them? One might very well, as a consequence, in the name of tolerance and a commendable concern not to introduce religious divisions and conflicts of civil society [...], ultimately exacerbate them, by favouring a drift towards private (and aggressively sectarian) establishments. The “perverse effect” has more than one trick up its sleeve»⁶⁹.

However, this opinion is far from unanimous. Moreover, it is in any case in contrast with the idea the atheistic associations⁷⁰ have in relation to the content of laws regulating some sensitive matters. Suffice to say that in the last years some of the most influential and effective atheistic organizations have continuously protested against the resurgence of blasphemy laws in

⁶⁸ See **LE MONDE**, *Pour Emmanuel Macron, «le lien entre l’Eglise et l’Etat s’est abîmé»*, 10 April 2018 (https://www.lemonde.fr/religions/video/2018/04/10/pour-emmanuel-macron-le-lien-entre-l-eglise-et-l-etat-s-est-abime_5283300_1653130.html; last accessed 10 September 2018); **THE TABLET**, *Macron outlines positive view of Church-State links*, 10 April 2018 (<http://www.thetablet.co.uk/news/8879/macron-accused-of-tampering-with-la-cit-after-church-state-remarks>; last accessed 10 September 2018). It should be noted that the 2017 successful presidential campaign of Emmanuel Macron appealed to religious voters, especially those referring to the Catholic Church. See **S. MAILLARD**, *Emmanuel Macron et François Fillon envoient des messages aux catholiques*, in *La Croix*, 17 April 2017. Concerning the relationship between *Laïcité* and Catholic Church see E. **TAWIL**, *Laïcité de l’État & Liberté de l’Église*, Artège Editions, Paris, 2013.

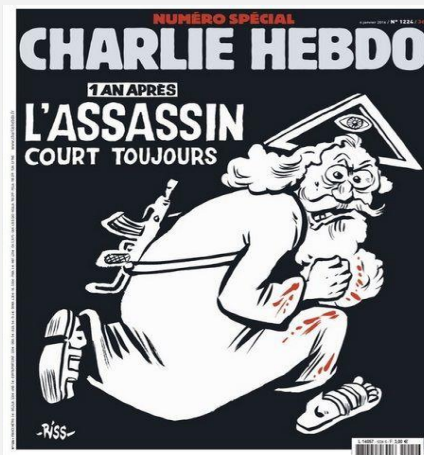
⁶⁹ **R. DEBRAY**, *Dieu, un itinéraire*, Édition Odile Jacob, Paris, 2001; see the English edition (translated by J. Mehlman), *God. An Itinerary*, London-New York, Verso, 2004, p. 289.

⁷⁰ For example: *Fédération nationale de la Libre Pensée française*, *Ligue de l’Enseignement*, *Ligue des Droits de l’Homme*; *Union Rationaliste*; *Conseil National des Associations Familiales Laïques*; *Mouvement Europe et Laïcité*; *Union des Athées Association Laïcité-Liberté*.



different States⁷¹. And it is not by chance that this and other similarly pro-religious laws have also been frequently criticised by *Charlie Hebdo*, along with cartoons depicting sarcastic images of religious figures.

It should be noted that the rejection of religious belief was felt by many commentators to be a key factor in the 2015 terrorist attack. The extensive support for *Charlie Hebdo's* continued publication was thus largely based on the principle of freedom of expression⁷², even when referring to its militant atheism; which not for nothing was once again emphasised on the cover of the special issue marking the first anniversary of the 2015 tragedy.



Paradoxically enough, one of the most striking results of the terrorist attack has been the rallying of religious organizations to a defence of the French principle of *laïcité*. Furthermore, this has also been a new source of support for some forms of secular belief, which address the issues of ethics, values and personal life that were previously the stronghold of religions⁷³. It is not therefore surprising that some of the existing manifestations of the French

⁷¹ See *ex plurimis* C. CONTE, *Contre le prétendu 'délit de blasphème'*, *Mediapart*, 3 octobre 2012 (<https://blogs.mediapart.fr/edition/laicite/article/031012/contre-le-pretendu-delit-de-blaspheme>; last accessed 10 September 2018). The *Fédération Nationale de la Libre Pensée* was oldest of these French associations: it was founded by Jules Simon in 1848 and supported by a galaxy of leading figures of the French Third Republic, including Louise Michel, Georges Clémenceau, Aristide Briand and Victor Hugo. See J. LALOUETTE, *La Libre Pensée en France, 1848-1940*, Albin, Paris, 2001.

⁷² C. FOUREST, *Éloge du blasphème*, Grasset, Paris, 2015.

⁷³ A. COMTE-SPONVILLE, *L'Esprit de l'athéisme: Introduction à une spiritualité sans Dieu*, Livre de Poche, Paris, 2008. See also A. COMTE-SPONVILLE, *Petit traité des grandes vertus*, PUF, Paris, 2014; L. FERRY, *La Révolution de l'amour. Pour une spiritualité laïque*, Plon, Paris, 2010.



atheism wish to discover the humanistic dimensions of religions, redrafting them in secular terms⁷⁴. In order to achieve this, they require a new legal framework for the principle of *laïcité*⁷⁵: a positive-open secularism (*laïcité ouverte*) under which cultural pluralism, freedom of religion, and freedom of expression can coexist peacefully, avoiding unreasonable (i.e. unconstitutional) discriminations⁷⁶.

Thus, the future shape of *laïcité* (*de combat?*) is likely to influence the coming forms of the French atheism, and *viceversa*: the future practices of atheism in France will certainly influence the forthcoming version of the principle of *laïcité*, its social and legal dimension. It remains that in both these cases the existing big socio-economic-political issues (such as immigration, globalization, new forms of poverty, social exclusion, the future of the European Union) will undoubtedly play crucial and vital roles.

ABSTRACT: With this article, the Author outlines the legal issues involving the atheism in France, analysing them in the light of the principle of *laïcité*. France has a long history of criticism of religion. Many philosophes of the Enlightenment, for example, have provided the classical writings in this field. In this sense, they were able to aliment two major streams of thought of the magmatic French atheism: one is based on the horizontal influences arising from the effect of increasing worldwide travel with the discovery that people do not necessary share the same views and beliefs about the nature of human being; the other is centred on vertical arguments bubbling up from the past in a very form of scepticism and realism. With its multi-faceted and articulated view, the French atheism has also been promoted by a number of movements devoted to arguing the case for non-belief and for its political expression in *laïcité*. In this manner, the Author tries to demonstrate that, since the Great Revolution and during the long history of the French constitutional system, *laïcité de combat* and atheism has

⁷⁴ On this see C. WATKIN, *Difficult Atheism: Post-Theological Thinking in Alain Badiou, Jean-Luc Nancy and Quentin Meillassoux*, Edinburgh University Press, Edinburgh, 2011.

⁷⁵ R. DEBRAY, *L'Enseignement du fait religieux dans l'école laïque*, Odile Jacob, Paris, 2015.

⁷⁶ This appears to be the perspective of the *Observatoire de la laïcité*, which operates under the Prime Minister's office. See **OBSERVOIRE DE LA LAÏCITÉ**, *Qu'est-ce que la laïcité?* (<https://www.gouvernement.fr/qu-est-ce-que-la-laicite>; last accessed 10 September 2018): "[L]a laïcité repose sur trois principes et valeurs : la liberté de conscience et celle de manifester ses convictions dans les limites du respect de l'ordre public, la séparation des institutions publiques et des organisations religieuses, et l'égalité de tous devant la loi quelles que soient leurs croyances ou leurs convictions. [...] La laïcité n'est pas une opinion parmi d'autres mais la liberté d'en avoir une". On this see also P. MANENT, *Beyond Radical Secularism: How France and the Christian West Should Respond to the Islamic Challenge*, St. Augustine's Press, South Bend, 2016.



been influencing each other in a constantly shifting process of mutual adaptation.

Keywords: Atheism, Secularism, France, Religion, Constitution, Rights, Freedoms.