Laïcité in France - Contemporary Issues Panel Discussion

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LAÏCITÉ IN FRANCE—CONTEMPORARY ISSUES PANEL DISCUSSION

MOVSESIAN: We’ll begin now our first panel, “Laïcité in France—Contemporary Issues.” I am not going to read all the introductions—they would all be superlative—because I would like to save time for discussion. I’ll just say the presenters are Nathalie Caron from Université Paris-Est Créteil; Blandine Chelini-Pont from Université Paul Cézanne Aix-Marseille; Rosemary Salomone from St. John’s University; and Emmanuel Tawil from Université Panthéon Assas. I think the best thing is to wait until after all the participants have spoken; we will have a discussion after that.

Okay, so, first, Nathalie.

CARON: Well, thank you. Thank you very much, Mark. I actually have a title for this paper. I have called it, “Resisting the Return of the Religious”: retour offensif du religieux, as we say here in France—“The Appeal to the Radical Enlightenment.”

The French Republic rests on a secular ideal—Douglas told us about it—called laïcité, which is defined in the 1905 law. It is the result of a long historical process, which put an end to the domination of the Catholic Church. It’s a value inherent in republicanism, which assures the equal treatment of all religions and protects freedom of religion and of conscience. Changing demographics and issues of pluralism have led to a heated debate over the meaning of laïcité over the past few years. As a result, questions about the place of religion in society have become increasingly urgent. And three major attitudes have emerged in the context of the debate.
Some people, in line with President Sarkozy, have advocated what has been called laïcité ouverte, or open laïcité. Another term for this concept is laïcité positive; this term reflects a concern with the free exercise of religion. Proponents of positive laïcité are tempted to revise the 1905 law. Other people favor what has been called laïcité en mouvement, laïcité in movement. These people are sensitive to social and religious changes—to the fact that Islam now is the second religion in France, for example—but they remain faithful to the history of the secular ideal. Finally, the most militant group, concerned with what they call the decline of laïcité, defend the French republican model by demonstrating the dangers of communalism and by calling for the strengthening of the 1905 law.¹

I will focus on this third category, the group of people who defend what has been called laïcité de combat. As an intellectual historian working on the Enlightenment, as well as on free thought and the skeptical tradition in the United States, I will offer a few remarks on the revival of interest in militant skepticism and atheism in France and the sources of their inspiration. I will use as a starting point a short piece published in Le Monde Diplomatique. In its February issue, Le Monde Diplolo—as it is traditionally called—published a short piece called “Les Lumières au Secours du XXIe Siècle,” in English, “The Enlightenment to the Rescue of the Twenty-First Century.”² The piece comments on the recent publication of three eighteenth-century Enlightenment writings which, in one way or another, have to do with religion. I'm speaking of Le Philosophe Ignorant (The Ignorant Philosopher) by Voltaire, published in

Before I discuss this short piece, written by Evelyne Pieiller, I’d like to say a few general words about Le Monde Diplo. Le Monde Diplo is a secular, left-oriented, quality monthly with an international readership. It’s translated into twenty-six different languages. It publishes in-depth articles on topics largely ignored by other media. Issues of laïcité are not paramount in Le Monde Diplo, which is more concerned with criticism of neo-liberalism and American imperialism. The journal’s stance is “alter-globalist,” in French, altermondialiste.

Le Monde Diplo is well-known for its unabated fight against what it calls la pensée unique. The term was coined by the former director Ignacio Ramonet in 1995; it is now a part of the French language. It refers to the unavoidable, dominant discourse, the seemingly only possible one, a discourse based on the principle that the economy prevails over politics. The argument is that the consequence of the domination of the market is the destruction of our capacity to think. According to Ramonet, the constant repetition of this catechism—he uses the word “catechism”—by all our politicians stifles all effort to think freely. Because our minds have been made insensitive, disasters such as unemployment, urban problems, corruption, the destruction of the planet—or in
Ramonet's words, the return of racism, extremism, and religious fundamentalism—appear as hallucinations or mirages, as if these problems were unreal.⁶

Articles about the burqa, or the veil, are relatively rare in Le Monde Diplo. However, last April, Serge Halimi, the director of publications, published an editorial under the title, “Burqa- bla- bla.”⁷ And there was also a short letter by a reader, a Muslim, reacting to this editorial. Halimi’s stance was clear: The burqa, like the minarets, are minor topics placed at the forefront of the media scene, with the complicity of the government, in order to hide France’s more crucial problems. Consequently, more French people know about the three-hundred-and-something women wearing burqas in France and the four minarets in Switzerland, than they do about the public treasury’s loss of €20 billion because of a technical error. In the editorial, Halimi does not say much about the burqa itself, his main point being to expose the political right’s hypocrisy and lies. The fact that he did not say much about the burqa seems to imply that he considers—in a very French, secular way, if I may say so—that faith and religious practices are private matters. Nonetheless, when referring to the burqa, he did use the expression “symbole obscurantiste,” obscurantist symbol. And the writer of the letter—as I mentioned, a Muslim—reacted to this editorial and criticized the incapacity of the West to understand Muslim spirituality, emphasizing that the niqab—for some, a more appropriate word to refer to the type of veil that covers the entire face, except for a space for the eyes, that we occasionally see in France—is actually the result of a religious choice.


Now, to get back to Pieiller’s article, I find it particularly relevant that *Le Monde Diplo* published this short piece, with its hopeful reference to the Enlightenment and its underlying reference to Kant’s 1783 definition of the Enlightenment, *sapere aude*: dare to use your own intelligence. And this example is actually one example among many others, which I selected because of *Le Monde Diplo*’s wide readership. The Enlightenment as an emancipating and secularizing movement is in fashion today in secular France.

The texts reviewed by Evelyne Pieiller, Voltaire’s *Ignorant Philosopher*, and Diderot’s and Hume’s dialogues, are short. They were published just a few months ago by Flammarion and Gallimard in paperback editions, and they all cost less than €6. While the introductions are long and thorough and written by scholars, the texts are clearly aimed at the general public, including high school and college students, and more widely at people with little knowledge of Christian doctrine, people who may not know the theological meaning of a word as common as “confession.”

All three have to do with epistemology and with the search for truth. “How can we know?” they all ask. And this is what *Le Monde Diplo* is adamant about in its fight against the dominant discourse. The texts are not explicitly anti-religious, but they do question religion. Eighteenth-century Enlightenment philosophers are held up by *Le Monde Diplo* as essential references, crucial to our understanding and acceptance of difference, to our ability to live together, and to the development of our critical sense, *notre “sens critique,”* namely our ability to remain insightful critics.

The first idea conveyed in Pieiller’s piece—and also in the eighteenth-century writings she recommends—is that respect for difference and

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8 DIDEROT, *supra* note 4, at 39.
tolerance must not mean absence of criticism. “Insolent thought” is required, she says, “insolence” meaning “audacious,” “provocative.” And the second idea that she conveys is that only doubt—I’m not talking about atheism, but doubt, and probably also agnosticism—is the solution which will deliver us from prejudice and fanaticism. The choice of the philosophers is indeed relevant. While Diderot was a self identified atheist—“l’homme qui ne croit rien” (“the man who did not believe in anything”) in the words of his companion in the dialogue—Voltaire and Hume are more rightly defined as skeptics. Voltaire is a well-known figure among the French, among the youth in particular, his writings being on the syllabus for the baccalauréat, the exam taken at the end of high school. Voltaire is famous for his passionate defense of tolerance and his fight against religious fanaticism, which he called “l’Infâme.” He is usually described as a deist, or even a theist, in other words, someone who believed in a creator and assumed that the creator intervened in man’s affairs. Interestingly here in Le Ru’s introduction, he comes across as “a skeptic deist,” who experienced a growing skepticism as his life drew to a close and whose God may have been that of Spinoza.

What struck me when I read Evelyne Pieiller’s article, and also the editorial on the burqa, was that here was another example of the way in which the Enlightenment, and more particularly what intellectual historians call the Radical Enlightenment, is used ideologically in France today. It is used to reactivate the need to think freely in a society threatened by the dominant discourse, which homogenizes thinking, and by relativism, which in the name of tolerance tends to put our minds to sleep. But there is a contradiction, or dilemma, one that is inherent in any form of promotion of freedom of expression. I had already seen this dilemma in eighteenth-

9 Id. at 38.
10 VOLTAIRE, supra note 3, at 16.
century Enlightenment champions of liberty such as Thomas Paine, whom I have studied. I'm speaking of the difficulty in reconciling a forceful criticism of a dominant discourse which tends to ignore differences and the confident insistence that doubt or free thought is superior to faith and that religion, in its institutionalized form or not, is necessarily obnoxious. To a certain extent, the criticism of the pensée unique may lead to the construction of another “pensée unique,” one which is intolerant and adamantly anti-religious.

The article also reflects a need to react to what is perceived as a decline of laïcité. The Enlightenment is used in the article as a reminder of laïcité’s origins and its true meaning. Simultaneously, the Enlightenment is summoned to express a form of resistance to what is called “le retour offensif du religieux,” the forceful return of the religious. For Pieiller, whose outlook is unmistakably secular, the forceful return of the religious can be seen in President Sarkozy’s celebration of priests, as well as in encroachments on the liberty of expression in the name of respect for the Bible, and also more vaguely in signs of religious revivalism. Pieiller’s reference to Nicolas Sarkozy relates to a controversial speech the President made in the Lateran Palace in Rome, in which he said—I’m quoting the president of France—“The schoolteacher will never be able to replace the priest or the pastor.”

This statement drew sharp criticism for contradicting the basic principle of laïcité, whose close links with education derive from the Enlightenment’s appeal to reason and, as I said earlier today, the idea that schools are the vehicle for emancipation, universal progress, liberty, and equality.

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What I have been describing here is echoed in a number of ways in the United States. That is somewhat paradoxical, given that, as we heard this morning, the United States and France are traditionally diametrically, and often artificially, opposed when it comes to religion, and given the American reluctance to refer to the Enlightenment paradigm in general. Nonetheless, in the United States, the Enlightenment is used ideologically by two major groups of people, though these groups don’t appeal to the same Enlightenment writers. On the one hand, we have the neoconservatives, who use the Enlightenment a lot—but I’m not going to speak about them. The other group is the secularists, most recently the New Atheists, for example, Sam Harris, Christopher Hitchens, Richard Dawkins, and others.

There is no doubt that similar controversies about the role of religion in society are in play on both sides of the Atlantic. And it is no coincidence that The God Delusion, by Richard Dawkins, as well as God Is Not Great, by Christopher Hitchens, recently appeared in French, along with the new editions of the books I mentioned earlier, and also other eighteenth-century writings. It is as if today, the French, citizens of one of the most secular nations in the world, were badly in need of inspiration and intellectual support for laïcité, to the point of looking for inspiration not only in the eighteenth century, but also in the United States. I find that interesting in terms of cultural transfers and of what it reveals of the effects of globalization, and also rather ironic. However, the paradox is partly explained by the fact that an author like Hitchens himself, who is British-born, draws from

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the Radical Enlightenment. So, it’s no wonder that the publisher who had Hitchens translated into French thought that the book would find a readership here.

President Sarkozy’s approach to laïcité—his tendency to infuse various speeches with “God talk,” the way he introduces religion into the public sphere—disturbs many French people. This, as well as the rise of religious extremism, has renewed old debates, which date back to the eighteenth and even seventeenth-century. Since Voltaire, Diderot, and Hume’s times, or Thomas Paine’s, the dispute over skepticism has endured, and its scope, of course, has expanded. New religious demographics, increasing diversity in Western Europe, as in the United States, have brought Islam and other faith traditions into the debate. And the scrutiny of the errors of religion now includes references to international terrorism, new religious movements, child abuse, the threat to women’s reproductive and sexual rights, and creationism, among other issues. Through all of this, Enlightenment reasoning and rhetoric have persisted, with emphasis on the critical fight against the alliance of politics and religion, and the fundamental epistemological Hobbesian question, how can we know anything about God? The Monde Diplo piece demonstrates this once again.

Thank you.

MOVSESIAN: Blandine?

CHELINI-PONT: My paper discusses the debate on the constitutional foundations of the full veil ban in France. On March 30, 2010, the French Council of State, rendering an advisory opinion in response to a question by the government, expressed serious doubt, for the second time since the Fall, on the possibility of an absolute and general ban on women wearing in public garments that cover the face entirely—burqa—or almost entirely—eyes visible, niqab—known in France as the “full veil.” The Council proposed measures for specific
administrative places and services, leaving aside public streets in general. In explaining its position, the Council stated that an absolute and generalized ban had no indisputable legal foundation, either from a French constitutional point of view or from a conventional European perspective. Notwithstanding the opinion of the Council, however, the government decided to present a bill banning the full veil to the National Assembly. Notably, the government cut short discussion of other legislative proposals on the full veil, especially a more debatable proposal by deputy Jean-François Copé, titled a “Bill to Prohibit Concealing One’s Face in Public Areas.” The members of the Assembly unanimously adopted, before the first vote on the law scheduled for July 13th, a Résolution intending to ban the full veil in public places. This Résolution had only a declarative strength, but it clearly explains the French context and the civil values which underlie the ban.

Given the strong consensus in favor of the ban on the part of political parties and the French public, it is more than likely that this law will pass. Putting aside for the moment the justified criticisms by Socialists of the political manipulation of this issue by the presidential majority, and the fears of “Islamalgam” (the confusing of Islam with radicalization) expressed by leaders of the French Council of the Muslim Religion, the law would be very simple. In two articles, it would prohibit wearing a full veil on national territory under penalty of a €150 fine and/or a course on citizenship, and punish anyone who forced a woman to wear a full veil by “violence, threat, abuse of power or authority,” by imposing a €15,000 fine and one year’s imprisonment.14 Prime Minister François Fillon stated that he would take

the legal risk, despite the Council of State's warning, on behalf of the Republic's values of living together in society and the dignity of women.

This morning, I will give you a few arguments against and for the ban.

I will begin with arguments against the constitutionality of the proposed law. The first argument is, in my opinion, the weakest, in the French context. It is that this law will contravene religious freedom, which includes the right to dress according to one's conviction. As I say, this argument is a fairly weak one, in French context. In France, like elsewhere, there are few situations in which religious freedom can be successfully invoked when it conflicts with other democratically-established rights or laws. For example, we cannot invoke religion to justify polygamy, which is absolutely forbidden for French citizens and residents alike. Ditto for female genital excision.

To say that covering one's face completely concerns religious freedom is countered by the fact that this garment could be seen as violating other rights (including the right to dignity) and by the fact that Muslims themselves are not unanimous about the religious nature of such a garment. Religious freedom is not an absolute in France, as you know, except in the "internal forum": freedom of conscience, for example. In the "external forum," religious freedom is qualified. For example, the state may place serious limits on praying in the streets, as well as proselytizing.

The notion of freedom of religion as a reason to allow women to cover their faces in public is denounced by numerous experts in our country. For example, Dounia Bouzar, an anthropologist who studies the radical Muslim community, says that the full veil is in fact a manifestation of the pathological and sectarian backgrounds of radicals, who cause great harm to Muslims themselves. Dalil Boubakeur, rector of the Grand Mosque of
Paris, says the full veil is not at all Muslim, an idea confirmed by the rector of the Al-Azhar Mosque in Cairo. Even from a conventional legal perspective, if judges were to address claims that a law banning the full veil denied religious freedom, they would have a lot of latitude, given previous case law, to argue that religious freedom isn't "pure" or sufficient to prevent a ban, especially since the garment is worn only by women inside radical groups, whose political views may be anti-democratic.

The second, and stronger, argument against the law is that a general and absolute ban is disproportionate, particularly if it's enforced on the basis of public order. Public order in a democracy must be limited to the strict requirements of security, safety, and public health. In order to be justified, restrictions on the free movement of people, because of clothes that hide their identity, must be based on a compelling interest in safety. Given the nonviolent, and seemingly nonaggressive, nature of people who wear this garment, who are just walking in the streets, the public order argument for an absolute and general ban seems disproportionate. The position of the Council of State is consistent with its earlier opinion in the case of the simple headscarf in French schools, which the Council rendered in 1989. The Council felt that the simple headscarf was compatible with the secular nature of public schools and that a ban would be disproportionate. If girls did not disturb classes and did not aggressively proselytize, they could indeed wear headscarves, without undermining the secular nature of the public school.

Now, I will address arguments in favor of the ban's constitutionality. First, in the French context, I believe, "public order" is not only about safety, tranquility, and health of people in the streets. In English, there is an interesting term to translate the French term "public order"—"law and order." On this understanding, the term "public order" demonstrates, in a certain way, the spirit of the
law that prevails in a country. “Public order” represents a balance between the mores of a given population and the values upheld by their constitution. In this balance, the street is an area where peoples’ attitudes express their common values. These values are principally human dignity, shown by respect for others in one’s expression and attitude, and equal treatment of persons, which means no segregation in public areas on the basis of age, sex, physical state, and disability.

In this regard, it’s very interesting to understand that the French prohibit nudity in the streets. On French territory, it is forbidden to walk naked anywhere where people are likely to meet. This rule is no longer based on public decency, but on respect for others. Morality as a component of public order has evolved into a concern for human dignity. Another example is the Council of State’s 1995 decision concerning “dwarf tossing.” The city of Morsang sur Orge had prohibited a business from producing a show in which customers threw dwarfs like pinballs with the intent to entertain. Even though the dwarfs, employed by the company, claimed to consent to this “job,” the Council forbade the practice on the grounds that it was detrimental to human dignity, stating that “human dignity is a component of public order.”

Public order, in these examples, means the values of the Republic in a (shared) common space. In this sense, the absolute ban of the full veil is proportionate to its purpose. The act of covering one’s self entirely, like dwarf tossing, is a serious infringement on the principles and values of the French Constitution and the European Convention of Human Rights: equality, nondiscrimination, and dignity. What does a full veil communicate, in fact? It communicates the exclusion of women from the view of any passersby, whoever they may be. This practice concerns only women; it is a

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distinctive and exclusive sign pertaining only to women. It symbolizes, really, the inequality of women. Inequality comes from the fact that women must wear a garment that hides them from the view of others because only the men in their family have the right to see them, in the privacy of their home. Wearing the full veil contributes, in a way, to eliminating the possibility of mixed sexes in public and denotes the subordination of a woman to the men in her family.

Another point: In public areas, even a minimal notion of equality—the least of the least—requires that people see and be seen, face to face. Just as one does not exhibit one's genitals, one does not cover one's face. In segregationist states, whites and blacks were separated because whites didn't want to see blacks in the same places where they were—schools, buses, universities, hospitals. Blacks were hidden from the presence of whites. Where human equality is a constitutional principle, we don't hide from the view of others. Hiding one's face breaks the minimal social pact that guides a community of citizens. What of this pact can be shared if the female half of humanity excludes herself, or is excluded, by a garment that conceals her from the eyes of others?

Finally, the major discrimination this garment symbolizes can be compared to the segregation among social classes in the ancien régime or, in a much more dramatic comparison, the segregation of Jews in Nazi streets, recognizable by their yellow star. Discrimination by specific clothing could be included in the criminal offence of discrimination according to the yet existing provisions of this offence upon the principle of equality.\(^{16}\)

\(^{16}\) Article 225-1 of French Penal Code describes what could enter into the criteria of a discrimination:

Discrimination comprises any distinction applied between natural persons because of their origin, sex, family situation, physical appearance or patronymic, state of health, handicap, genetical characteristics, sexual
My last point relates to the principle of human dignity. Human dignity is not defined in French law or in the European Convention. Yet it is the foundation of our whole legal system. The absence of a definition is symbolic, in that the concept is so broad and rich that it carries with it centuries of ethical maturing. Violating someone’s dignity invariably means acting in a humiliating manner, by degrading him or her, or by being cruel. But this does not exhaust the concept of dignity. The concept also implies recognizing another person as a social being. It implies acknowledging others. In this sense, the full veil is a deeply humiliating garment which makes women invisible, devoid of a social or a human identity. A person's dignity has multiple interests, ranging from corporal integrity to the recognition of social integrity. Dignity has two dimensions—a built-in, static one and a dynamic one, “situated” within a context. And in the context of a public place, in a country claiming to put human dignity at the top of its hierarchy of values, hiding the face of a human being for reasons of religious modesty, or submission in relationships on religious grounds, is truly unworthy.

That which is removed from view under the full veil—apart from the woman herself, who is considered solely on her sexual dimension and in the most trivial sense of the term—is the face of the person who wears the veil. In the anonymity of the veil, the woman is reduced to one thing only. One cannot justify hiding one’s face even out of modesty. There is nothing indecent about a bare face; a face is not a body, nor the genital parts of a body that cause raw sexual desire. As a result, there have never been face garments, either in our civilization or in Muslim civilization. The full veil

morals or orientation, age, political opinions, unions activities, or their membership or non-membership, true or supposed, of a given ethnic group, nation, race or religion.

is a tribal custom that has no great legacy in terms of civilization; it was imported by proponents of radical Islam. It is exactly what it symbolizes, which is why it appears to me that it is possible to defend the ban on French territory according to an interpretation of our core principles.

I thank you.

MOVSESIAN: Next is Rosemary Salomone from St. John’s.

SALOMONE: Good morning. One of the advantages of not going first in a roundtable like this is that you have all of the benefit of the discussion and the ideas that have come before you. One of the disadvantages is that you fear repetition. And so, what I’m going to do, is pull back a bit from Blandine and the more extreme case of the full veil and go back to the wearing of the veil in schools and the 2004 ban—looking at it somewhat humbly, as a person who is not an expert in laïcité, but who knows a lot about schooling, and talking to the French from an American perspective. And, again, I say, I do that rather humbly, because our views are so colored by our own history, as Doug Laycock said earlier this morning, and by our political foundations.

In recent years, considerable scholarly and media attention has focused on the 2004 French law prohibiting the wearing of religious symbols in public schools. As the world watched this drama unfold, with Americans in particular casting a critical eye, it became clear that there was more here at stake than simply the right of Muslim girls to wear a headscarf to school. What the Americans and others encountered, but could not fully comprehend, was the French concept of laïcité, a comprehensive ideal whose purpose is to symbolize, promote, and preserve the French Republic’s founding principles of liberty, equality, and fraternity. Of much broader scope than its common English translation as “secularism,” laïcité encompasses a universalist view of
citizenship in which religious and other particularistic distinctions like language and ethnicity are relegated to the private sphere.

As the controversy over the veil has demonstrated, public education, with its mission to create “good” citizens in the interests of the state, can easily become a battlefield for resolving the tensions inherent in such an all-encompassing concept. Laïcité scolaire, a remnant of the French Revolution and the struggle to end the Catholic Church’s control over schooling, now demands a broad exclusion of religion from state schools. In contemporary France, the concept has met its most direct challenge in the growing Muslim population and the group’s mixed success in conforming to the French assimilationist project and blending into the mainstream. While some among the French call for a more multicultural interpretation promoting minority cultural interests, others cling to tradition-laden rationales preserving the integrity of the nation-state, its values, and its fixed identity.

Viewed in this light, underlying the debate over the wearing of the Islamic veil in schools are several interrelated issues, all tied to laïcité, that I would like to briefly explore: France’s historically restrictive position on religion in public life; its attitudes toward immigrant integration and cultural pluralism with the perceived dangers of communautarisme (communalism), and the mission of state-run schools to produce French citoyens (citizens). But first, we need to examine the events that led up to the law’s adoption.

In October 1989, the principal of a public junior high school in Creil, near Paris, expelled three Muslims students for refusing to remove their headscarves. The issue gained national attention as it was likely to resurface elsewhere. President Mitterand’s wife publicly spoke out in favor of the girls. The Minister of Education, Lionel Jospin, declared similar support in the National Assembly, that he looked toward a solution in Creil based on
“dialogue between school administrators and parents.” Some intellectuals on the left, including feminists, accused Jospin of following an “appeasement policy” in lieu of completely banning the wearing of headscarves in the schools. Others on the left did not support the wearing of headscarves but opposed “exclusion.” They feared the consequences of keeping girls out of school as feeding “fundamentalist” interests.

Pressured by division in his own party, Jospin sent the matter to the Conseil d’Etat (Council of State), the final appeals court for school cases. It should be noted here that the Council has no remedial authority to enforce its rulings and decisions can be overturned by legislation. Within a few days, the government launched an advisory group on integration of immigrants. This group later became the High Council on Integration.

In November, the Council of State, citing the French Constitution and the European Convention on Human Rights (article 9 protects freedom of conscience and religion), ruled that wearing a headscarf was not incompatible with laïcité. But it also included a number of “hedges,” prohibiting the wearing of symbols that would “constitute an act of pressure, provocation, proselytism or propaganda or undermine the dignity or the freedom of the individual or other members of the educational community.”

The opinion did not put the matter to rest. Intense media attention fueled the continuing debate. Over the next ten years, according to a survey of six French newspapers, a total of over 1,100

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articles on the headscarf appeared. The controversy also carried over into French courtrooms. The Counsel of State overturned the vast majority of expulsion cases that came before it, clearing weighing on the side of the girls. Nonetheless, in September 1994, education minister François Bayrou issued a directive that required principals to ban “all ostentatious” signs from schools. Although 2,000 girls ignored the prohibition and continued to wear the veil, by the end of the school year only 115 had faced expulsion.

To round out the picture, a sense of the surrounding geo-politics proves helpful. Between 1989 and 1994, Algeria had become the site of rising violence linked to Islamic terrorism. In the mid-1990s, bombs exploded in Paris and Lyon. The media increasingly linked the continued fighting in Algeria as well as local violence to the headscarf controversy. Reporting on the veil in the schools ratcheted up in 2001 after the 9/11 terrorist attacks in the United States. Against that background, in the fall of 2003, the expulsion of two girls (the Lévy sisters) from a high school in Aubervilliers, a northeast suburb of Paris, once again triggered a media blitz.

In the meantime, in July 2003 President Jacques Chirac appointed a twenty-member Commission on laïcité, popularly known as the Stasi Commission. Although the Commission’s official mandate was quite broad, it had a more focused goal in mind: to devise a model of laïcité scolaire that could bring final resolution to the headscarf crisis. To that end, it studied the matter for six months, holding more than 120 hearings. In December of that year, Chirac told a group of secondary school students in Tunis that wearing the voile is “a kind of aggression that is difficult for the French to

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20 KURU, supra note 17, at 104.
Six days later, the Stasi Commission issued its detailed seventy-eight-page defense of laïcité, covering a number of issues but explicitly recommending that “ostensible signs” such as large Christian crosses, Jewish kippas, and Sikh turbans, be prohibited from public schools. The common understanding was that the primary target of the law was Islamic headscarves.

The position was clear. The state’s interest in maintaining neutrality of the public school trumped the rights claims of the individual students. Neutrality was the only road toward true liberty, equality, and fraternity. In the Commission’s view, the headscarf embodied and perpetuated communalist values, biases, identities, and behaviors specific to Islamic culture. Within the school, it became a vehicle for “violence” eroding “individual liberties.” It prevented the “transmission” of certain necessary intellectual tools, such as a “critical spirit,” “personal autonomy,” and a tolerance for difference. More critically, it challenged the school’s central mission to preserve “public order” and to “safeguard” the Republic’s “principles and values.” It weakened the state’s control over the development of its citizens and ceded control to parents, whom the Commission considered the source of the child’s religious commitments. Removing the scarves from school would allow the students to function as neutral citizens of France, unencumbered by the intellectual and physical constraints of their communities. Students would be able to view each other as common citizens in spite of the real differences between them.

Following public protests and heated debate, the National Assembly followed the Commission’s recommendations and passed the legislation by a

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22 Bowen, supra note 18, at 127.
24 Id. at 52–54.
margin of 494 to 36, with 31 abstentions. The first article of the law stated, “In public primary, secondary, and high schools, the wearing of signs or dress with which the students manifest ostentatiously a religious affiliation is prohibited.” Despite the largely negative response outside of France, the law received wide support among French politicians, government officials, and academics across the French political spectrum, including feminist groups, a majority of teachers, and forty-two percent of French Muslims.

The Ministry of Education subsequently issued an order forbidding signs and clothing that could be “immediately recognized for a religious affiliation.” By American constitutional standards of due process and fairness in government decisionmaking, the order’s vague terminology was striking. What is “immediately recognizable?” What is “religious affiliation?” Must the veil be religiously motivated? Some Muslim girls might wear the veil as a sign of independence from their parents, or as a symbol of their maturity, or as protection from sexual harassment in their communities. In the end, Christian, but not Muslim, girls could wear headscarves to school. Jewish, but not Sikh, boys could wear turbans while Sikh boys could wear the equivalent of a kippa or skullcap. And who would determine the religious affiliation of each student? Would this not undermine the Republican ideal of erasing religious differences in the school? Where would laïcité as state “neutrality” toward religion come in?

In 2004–2005, the first year of the law’s operation, some students wore bandanas to circumvent the prohibition. The Minister of Education drew the

26 Gey, supra note 19, at 13.
line between an "ordinary bandana" and one that converted into a "foulard islamique," that is, one "worn for a full day, worn every day of the week, covering the hair entirely." During that year, 47 Muslim students were expelled, 533 agreed to remove their headscarves, 67 transferred to another country for schooling, 26 studied at home, 100 over the age of sixteen withdrew from school entirely.

One has to wonder what really was behind the banning of the veil. Was it an attempt to control the growing Muslim population? That suggestion seems unlikely as only a small number of Muslim female students were wearing headscarves. Was it intended to counter the disaffection of Muslim young people and growing Islamic fundamentalism? In that case, directly addressing poverty, unemployment, and unequal educational opportunities would have gotten to the root of the fundamentalist problem more effectively. Was it simply a general expression of anti-immigrant feelings, or concerns over the subjugation of women? To some extent these factors were at play, but they also exist in countries like the United States, the Netherlands, and Germany. Yet none of these had prohibited students from wearing headscarves in schools. Again, several related factors, all tied to laïcité, distinguish France from these other countries.

The French Constitution identifies the state as "secular." Article 2 states: "France is an indivisible, secular, democratic, and social Republic." And so, secularism is an intrinsic part of the state’s "identity" and not merely a "functional legal principle" defining the relationship between the state and religion. In contrast, in the United States, the First Amendment to the Constitution simply states:

27 KURU, supra note 17, at 107-08.
28 Id. at 108.
29 Id. at 105.
30 1958 CONST. 2 (Fr.).
“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” Both clauses require, at a minimum, “state neutrality” toward religion and in some cases, accommodation. The Amendment is part of the Bill of Rights, suggesting that secularism in the United States is a matter of “individual rights” and not a “comprehensive doctrine” that defines the “good life.”

In France, the approach to church-state relations, culminating in the 1905 law separating church and state, dates back to the French Revolution. It was the reality of an “ancien regime” built on the “alliance of monarchy and hegemonic religion” that led to anti-clerical feelings and hostilities among the Republicans. By way of contrast, at the time the United States built its secular state, the country was relatively new and not weighed down by an ancien regime. There also was a comfortable diversity among Christian religions. And so secular and religious elites reached an “overlapping consensus” on church-state separation at the national level though the dominant assumption was one of mainstream Protestantism. The new nation adopted and subsequently maintained certain symbolic forms of Christianity as aspects of what is now considered “civil religion”: “In God We Trust” on coins; the invocation, “God save the United States and this honorable Court,” as the Justices of the Supreme Court enter the Courtroom for oral argument. Within the context of their use, they have been “secularized,” or so the argument goes. In any case, contrary to France, they indicate a positive view toward religion.

31 U.S. CONST. amend. I.
32 KURU, supra note 17, at 12–13.
33 Id. at 14.
34 Id. at 9.
In classrooms across the United States, students recite the Pledge of Allegiance including the words, “one nation, under God.” And though those words have been challenged in court as violating church/state separation, the Supreme Court has yet to strike them down on constitutional grounds and is not likely to do so. The state cannot prohibit religious symbols overall or target those of a specific religion. Students are allowed to display such symbols as a matter of religious expression. In France, the state has targeted religious attire to exclude students without a practical justification like public safety or health. And while both countries prohibit organized prayer in public schools, the rationales differ. For the French, it would contravene the principle of laïcité. In the United States, the concern is “psychological coercion” over students who do not share the beliefs of the majority. The fear is not that religious expression itself is harmful to the speakers or more abstractly to the nation, as in France, but that state sponsorship, especially in the school setting, is harmful to others who feel forced to publicly act against the dictates of their own conscience. As the French philosopher Regis Debray has stated, in a somewhat exaggerated way:

Above the nation, in France, there is humanity. Above the society, in America, there is God. The President in Paris takes an oath on the constitution voted by the people from the world, and in Washington, on the Bible, which came from the heavens..... [He] end[s] his discourse to the strain of “God Bless America” and [is] photographed in front of the starred flag.

The stresses and strains of immigration, particularly from former French colonies, further complicate the debate over Islamic headscarves. A

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38 Id. at 8.
36 Id. at 236.
37 Id. at 9; see Lee v. Weisman, 505 U.S. 577, 592 (1992).
38 KURU, supra note 17, at 13.
large Muslim population has entered the country dating from the 1960s—guest workers, Algerians who had supported the French in the Algerian War, and others from an area in North Africa known as the Maghreb. Family reunification policies subsequently changed the political calculus. Immigrants became concerned not only with political and economic rights as workers, but with cultural and religious needs. There are now an estimated five million Muslims in France. Many of them are second or third generation and hold French citizenship. The French have taken a strong assimilatory position toward immigrants. Yet as they have learned, civic incorporation does not necessarily lead to social or political integration. Violent unrest and public expressions of disenfranchisement among Muslim youth have brought the reality of immigrant lives to the world’s attention in recent years. Their economic and social marginalization also has led to fears of religious extremism, which the increasingly common wearing of the veil has come to symbolize.

That is not to suggest that immigration is a new phenomenon to France. Over the past several centuries, France has uneventfully absorbed newcomers, many from within Europe, looking for a better life. In the twentieth century, France became a haven for refugees and exiles—Italian anti-Fascists, Spanish Republicans, and Jews fleeing the Nazis. These newcomers, however, mainly practiced within the Judeo-Christian religious tradition and therefore posed no visible threat to mainstream French values and lifestyles. The same can be said for the dominant group of Spanish-speaking immigrants, mainly Christian, in the United States, where Muslims and other religious believers form only a small percentage of the immigrant population. Moreover, the immigrant experience, together with religious and cultural diversity, are very much part of the American consciousness. It is largely who we are or how we perceive ourselves. That is not the case for the French.
Combined with religion and immigration, a third factor drives the headscarf controversy, that is, the role that state schools play in indoctrinating the young to create a shared sense of identity and national solidarity. State-run universal schooling historically has been the mechanism through which nation-states transform children into citizens and develop a common understanding of the rights and responsibilities attached to that status. Certainly that is the way the United States has viewed compulsory schooling since the beginnings of the common school in the mid-1800s. While key figures in the public school movement, like Horace Mann, feared traditional revealed religion as dangerous and socially divisive, they struck what they saw as a nonsectarian compromise grounded in what they, like the nation’s Founders, considered a core of widely accepted truths, though in reality again based on mainstream Protestantism.

For the French, however, “citizen” is more than a political class that specifies the individual’s duties to the state. Fundamentally attached to the universal, it is a comprehensive category of identity—one that embraces attitudes regarding class, culture, and language, as well as values. This resolve, that all French citizens have a single identity, has profoundly influenced French schooling. The school is not simply a place for transmitting Republican ideals and commitments. It is the very embodiment of those ideals and commitments, wrapped up in a totalistic theory of republican citizenship, of which laïcité is an integral part. The school is what fundamentally makes the French people “French.”

And while the concept of equality undergirds educational policy in France, it operates in a very different way from the American notion. Article 1 of the French Constitution guarantees equality before the law for all citizens without distinctions of origin, race, or religion. The French system of schooling views private backgrounds as inhibiting equality, effectively turning the American
argument for multiculturalism and diversity on its head. The French distrust religious as well as ethnic characteristics as divisive and anti-egalitarian. Unlike the United States, they consider diversity to be a threat to social cohesion rather than a key part of citizenship. In contrast to the elaborate system of data gathering established by the United States government, French law prohibits identifying citizens on the basis of national origin, race, or religion, though critics argue that egalitarianism too often becomes a pretext for inflexibility and a “cover for ignoring inequalities.”

France has rejected multiculturalism as an educational model. For the French, the values and social capital associated with civil society are superior to those existing within ethnic or religious cultures. Rather than refuse rights, the French reject the very concept of defining any groups to avoid fragmenting or destabilizing the French population. For the French, equality is an abstract ideal of “sameness.” The only way to achieve civic equality is to leave cultural and religious differences at the schoolhouse door. Though French schools promote “intercultural education,” it is solely within the context of European values with no attention to cultural, religious, or ethnic diversity. In the United States, equality is viewed primarily in terms of opportunity. It also has incorporated the concept of “difference,” for example, in educating children with disabilities or students whose home language is not English. In France, *égalité des chances* (equality of opportunities) only recently has begun to gain some support in public discussion on school reform, especially as applied to disadvantaged minorities. Yet as the rancorous debate over admissions to the elite universities has shown, the concept is highly contested in a society that prides itself on being a meritocracy.

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Implicit in the mission of French public schooling is the task of liberating the mind of the student. The French school serves as an emancipating intellectual space, governed by reason rather than ideology, where students can freely explore new ideas. It is a sanctuary from the larger society, what Jacques Chirac affirmed in a major 2003 speech on religion in the public space, as a sanctuaire républicain (republican sanctuary). It also emancipates the student from his or her particular community—whether defined by religion, social class, language, or ethnicity. In a sense it frees the student from his or her parents. The student is thus able to see beyond his or her particularities and adopt a worldview common to all French citizens.

The education system in the United States more affirmatively engages the student with the rest of society. It also is less overtly suspicious of parents, especially when it comes to values formation, though the law is reluctant to accommodate particular religious values, for example, requests for opting out of reading programs based on religious beliefs. In the United States, education also is highly decentralized in contrast to the centralized French system. And so American courts commonly defer to majority values at the local level in setting curricular matters. That fact in itself promotes a certain amount of diversity from community to community and state to state.

Looking at the mission of French schooling in this light, it is understandable why the French state would look to remove the influence of religion from education. Wearing a headscarf challenges the goals of French civil culture. It symbolizes both refusal to adopt a neutral position and making a choice according to religious convictions. Yet France seems to stand alone even among its European neighbors on this count. In British schools, headscarves are accepted as part of the multicultural concept of British society. In the Netherlands, religious signs are interpreted as a matter of personal choice, in effect treating
religious issues in public schools in a way that reflects a secularized tradition. Again, in the United States, such signs are permitted under an anti-discrimination jurisprudence as a matter of religious expression protected under the First Amendment Free Speech Clause so long as they do not contravene countervailing interests of the state, such as protecting the health or safety of other students.

So how can the French move forward on these contentious questions, and particularly, the wearing of the headscarf? Some religious practices in public schools pose a challenge to secular understandings of religion in the public sphere, though the wearing of the Islamic veil pales in comparison to the more extreme, and now internationally debated, practice of wearing the full burqa. Yet France need not abandon its historical commitment to church/state separation in order to reach a more politically workable solution to the problem. A less aggressive and more pluralistic reading of laïcité might be consistent with both French history and with the successful integration of Muslims. The state need not suppress individual religious practice to promote neutrality. Allowing Muslims to practice their faith within certain reasonable parameters—no proselytizing, concerns for public safety and health, et cetera—would send a message that the state is not hostile to Islam. On the other hand, the currently strict reading of laïcité arguably impedes the integration of Muslims. It breeds hostility among them toward French culture and society, propelling already “disaffected segregated communities,” and particularly young people, further into the welcoming embrace of “radical Islamicists.”

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The banning of the Islamic headscarf from public schools seems both counterproductive and counterintuitive in other related ways. Some of the arguments advanced by the Stasi Commission, in fact, seem highly debatable and even faulty when viewed in light of today’s demographics. Though the headscarf represents certain beliefs, it is not the primary source of them. Banning the veil does not guarantee that students will interact more peacably with each other, nor does it promise to foster “fraternity” within the public school. On the other hand, permitting students to wear the scarf in school might regularize religious differences and encourage tolerance and mutual respect. Affirmatively engaging “difference,” rather than denying it, might promote a deeper sense of community among students, equipping them with the psychological resources to live comfortably with diversity in the wider society.

Nor does removing the veil assure that a Muslim student would feel more at ease in biology class or participate more actively in sports. While the Stasi Commission discussed the scarf in terms of female submission and religious fanaticism, interviews with scarved girls have revealed its role in identity formation and social integration. Using threats of punishment or expulsion to force students to modify their behavior may further provoke them to withdraw from the school and retreat into their isolated communities. As experience has shown, some students have left the public system for private Muslim schools. Others have remained uneducated. In this way, Muslims females have been denied exposure to a broader range of views beyond those of their religious community, in effect undermining the very purposes of French universal schooling. The ban consequently denies females gender equality, ironically in the name of protecting such equality, by limiting their educational opportunities. As a member of the French Parliament remarked following the tragic car burnings and fires in housing projects in the autumn of 2004, “We’ve combined the failure of our
integration model with the worst effects of ghettoization, without the social ladder for people to climb.”

These demographic shifts have generated challenging questions for the French to ponder: What is “authentic French culture?” Who is “truly French?” And in a resolutely secular country, can one be both French and Muslim? Those questions became highly volatile in the recent French debate over “national identity,” an ill-conceived project of the Sarkozy Administration. They also are exceedingly difficult for Americans to comprehend from the perspective of a nation that is not so resolutely secular and that has come to accept cultural and religious pluralism as a fundamental aspect of national identity. Yet they are the very questions that lie behind the French controversy over the veil. One can rightly conclude that a first step toward resolving this dilemma and maintaining social stability is for the French to collectively reframe laïcité to meet the modern-day demands of an unquestionably diverse and fractured society.

And I’ll close there.

MOVSESIAN: Next is Emmanuel Tawil.

TAWIL: Thank you very much. Rosemary just said that the United States is a new country. In my opinion, the huge difference between France and the United States is that France is not a new country. It’s not a new country.

My subject this morning is the set of agreements between France and the Holy See. I have decided on this subject for many reasons. One important reason is that although these agreements are an

41 ROSEMARY C. SALOMONE, TRUE AMERICAN: LANGUAGE, IDENTITY, AND THE EDUCATION OF IMMIGRANT CHILDREN 204 (2010) (quoting Manuel Valls, member of the French parliament and mayor of Ivry, a suburb south of Paris); see Craig S. Smith, France Has an Underclass, but Its Roots Are Still Shallow, N.Y. TIMES, Nov. 6, 2005, at 3.
important element of French laïcité, they are absolutely unknown to Americans and even French jurists.

Article 17 of the Treaty on the Functioning of the European Union provides for an open and transparent dialogue with religions. Conventional cooperation with religion is a part of this dialogue. Such cooperation exists in many countries in the European Union—for instance, in Italy, in Spain, in Portugal, in Germany, in Luxembourg, in Poland, in Hungary, in Croatia, in most of the member states of the European Union. When such cooperation exists, it’s usually available not only to the dominant religion of a country, but also to religious minorities. In France, for example, there is cooperation with all of the major religions.

But France has entered into conventions only with the Holy See. And yet, as I have said, almost no jurists know about the twenty agreements, more or less, that exist between France and the Holy See. The only thing French jurists know about the subject is that the Concordat of 1801 is still in force in Alsace-Moselle, for historical reasons. And even if they know that the Concordat is still in force, French scholars have absolutely no idea what its provisions are.

The relationship between France and the Holy See is very ancient. Since Pepin le Bref established the papal state in the eighth century, France has been present in Italy, especially in Rome. During most of the ancien régime, important aspects of the status of the Church of France were controlled by an agreement called the Concordat of Bologna. This concordat regularized the cooperation between the King and the Pope on the appointment of bishops in France. It gave the King the right to nominate bishops, nominare in Latin, and the Pope to provide for the appointment of bishops,

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42 Treaty of the Functioning of the European Union, art. 17, May 9, 2008, 2008 O.J. (C 115) 47.
instituare in Latin. During the Revolution, the Constituent Assembly decided that it had the sovereign power to completely reorganize the Church in France; the Pope disagreed with this decision, of course. In November 1789, the Assembly nationalized the clergy and church property; in 1790, the Assembly adopted a bill called the Civil Constitution of the Clergy, which displaced the Concordat of Bologna. After adoption of the Civil Constitution of the Clergy, the Pope annulled the elections of bishops in France and forbade priests from accepting the new dispensation. As a result, until 1801, the French clergy was divided in two parts, those who accepted the Civil Constitution of the Clergy and those who refused.

Immediately after Bonaparte became First Consul in 1799, he tried to resolve the division of the Church in France. The Pope and Bonaparte eventually agreed on the Concordat of 1801. The most important part of the Concordat concerned the appointment of bishops. Under the Concordat, the French head of state, like the King before, had the right to nominate the bishop, to whom the pope has to give the “institutio canonica”—“institution canonique,” in the French version of the text. The Concordat of 1801 provided the basis of French ecclesiastical law for more than a century, until 1905, when the French Parliament violated the Concordat by enacting the law on separation.

The French government enacted the law of separation just after breaking diplomatic relations with the Holy See, in 1904. After the First World War, however, the French government felt it necessary to reestablish diplomatic relations. Given political realities, in fact, it was absolutely impossible for the French government not to reestablish diplomatic relations. The French government had to face many issues. First, after its victory in the First World War, France regained sovereignty over the three departments of Alsace and Moselle. From 1871 to 1918, these three departments had been under German rule, and the
German Imperial Government had maintained the Concordat, and ecclesiastical law, in force. As a condition of regaining sovereignty, the French government had to agree to maintain the Concordat and ecclesiastical law in force. And, in order to do so, it was absolutely necessary for France to have diplomatic relations with the Holy See.

There were, in addition, two other reasons for reestablishing diplomatic relations with the Holy See. First, France's policy in the Middle East, especially regarding the protection of Catholics, required it to establish relations. Second, diplomatic relations were necessary to resolve problems that had been caused by Pope Pius X's refusal to accept the 1905 law of separation.

Thus, in 1921, diplomatic relations were formally reestablished. And, in 1924, by an exchange of letters, the French government and the Holy See agreed on a draft status for Catholic dioceses and associations; this agreement remains the basis of the status of the Church in France today. Since 1924, there has been no major change, even though at the end of the Fourth Republic the Socialist government greatly desired a new Concordat with the Holy See. (You know, the word "socialist" in France does not mean the same thing as the word "socialist" in the U.S.) In fact, a draft concordat was written, and if Socialist governments had continued to rule France at the end of the Fourth Republic, we would have today a new, general concordat with the Holy See, one that would have covered all of France.

So, we have diplomatic relations with the Holy See, and we also have some international agreements, which are still in force. The main difficulty for scholars is determining the number of these agreements. I myself am a specialist on this question, but I have yet to determine conclusively how many agreements exist. In my best judgment, I believe one can say that we have nineteen agreements currently in force with the Holy See. I
won’t give you the list, because it would be boring, but I would like to discuss some elements of the rules that these agreements provide.

Some rules concern the status of the Catholic Church in France. Let me first address the situation in metropolitan France—excluding Alsace-Moselle, which I will discuss in a moment. In 1921, when diplomatic relations were reestablished, the Holy See recognized that the French government would have a right to present objections to the appointment of particular bishops in France. This rule continues in force today. The government and the Holy See also agreed on the status of Catholic dioceses and associations. As I said, this status was agreed, in draft, in an exchange of letters in 1924; this exchange is considered as an international agreement by both parties. The French government and the Holy See have also agreed that dioceses and associations are entitled to collect funds for the Pontifical Mission Societies. This is a very recent and very important agreement between France and the Holy See, published in the Journal Officiel.

In 2008, the parties adopted an agreement on the recognition of diplomas granted by Catholic universities in France. As you know, Catholic universities are private; their diplomas were not recognized by the state before this agreement. But the Holy See is a participant in the so-called “Bologna process,” which attempts to harmonize standards in order to make university diplomas compatible across Europe. It is thus logical for the State to recognize diplomas in theology, canon law, and philosophy. This is logical and, from the point of view of the Bologna process, it poses absolutely no problem, no contradiction. If there is any problem at all, it’s only because we are not sure that the agreement was ratified according to the correct procedures. The substance of this agreement is absolutely not in contradiction with laïcité, as laïcité is defined by the Conseil d’État. There is absolutely no problem on that question; the only possible problem relates to procedure.
Another topic I would like to discuss is the status of the Catholic Church in Alsace-Moselle. As you know, the Catholic bishops of Strasbourg and Metz, and their coadjutors, are appointed according to the Concordat of 1801. Under the Concordat, the president of the Republic appoints the bishop by decree; the Pope, in turn, gives the bishop the *institutio canonica*. As a result of this system, the French President is the last remaining head of state entitled to appoint a Catholic bishop. And this practice presents absolutely no problem for French laïcité. Whenever the government appoints a bishop, the decree is submitted to the Conseil d'État—and the Conseil d'État always says that it’s okay, that there is no problem. There is also an agreement concerning the schools of theology of Strasbourg and Metz. Because they are part of the public universities of Strasbourg and Metz, these are public schools of theology. And canonical recognition of the diplomas of these schools is provided by agreement. Finally, in Alsace-Moselle, there are provisions concerning prayers by the Church for the French government. Under these provisions, the Church offers prayers for the French government once a year.

The French government also has privileges with respect to the Catholic Church outside France. Perhaps you know that France traditionally has a special right to protect Catholics in the Middle East. The French government continues to possess this right—actually, it’s an obligation. And that’s why our diplomats in the Middle East continue to receive liturgical honors during the Mass. For example, the General Consul of France in Jerusalem receives liturgical honors almost thirty times a year. This practice continues. And it presents absolutely no problem with respect to laïcité.

The French government also has some privileges in Rome. For example, the French government continues to own some churches and palaces in Rome. The status of some of these buildings is provided by international agreement. This is
especially the case for the church and the monastery of Trinità dei Monti, and also for the Church of San Claudio dei Borgognoni, in Rome, which are owned by the French government, but entrusted to the Holy See for use exclusively by Catholic congregations. Last Tuesday, for example, there was a Mass at San Claudio dei Borgognoni, and as usual, the French ambassador received liturgical honors. It was the same the week before, at Saint Peter’s, for the Mass of Saint Petronilla, who is the patron of France in Rome. And I must confess that I was very proud—very, very proud—as a French person and as a Catholic, to see my ambassador honored during the Mass. I was very proud, because it means that my country continues to be important for the Holy See. And that’s very important, not only for me, but also for the French government, which continues to insist on its relationship with the Holy See.

Thank you so much.

MOVSESIAN: Thank you. I’m sure we have a number of questions. I’ll keep the queue. And this gentleman wants to go first. Okay, Marc DeGirolami.

DEGIROLAMI: Thank you, Mark. I have a question for Blandine. And I—it’s a nice question, no worries. I hope you’ll forgive a little bit of wind-up, because I think it might help in the formulation of the question.

So, as you were speaking, I was reminded of a mid-twentieth century debate in Anglo-American jurisprudence, between H.L.A. Hart, who was one of the most prominent expositors of legal positivism, and Lord Patrick Devlin, who is famous as a so-called legal moralist. Devlin’s position was that it’s the state’s role to enforce and protect a kind of common morality, a fairly muscular common morality. Now, Devlin’s phrase for this, or Devlin has come to be known for the phrase, you know, “public decency,” “public order.” And Hart, by contrast, took a position following John Stuart Mill. These are all recapitulations of older debates,
of course. But, following Mill, Hart took the position that the state really had a fairly minimalist role to play, that there was a sort of a baseline, common morality that it needed to help to enforce, but, beyond that, it really ought to keep clear.

Now, the subject of that particular debate was the criminalization of homosexuality, and over time it has become clear that Hart won. Hart won the debate, and Devlin has been triumphantly consigned to the dustbin of traditionalist conservative retrogression. But as you were talking, it struck me that this may be a kind of return of Lord Devlin. The kinds of arguments that you were making in favor of state intervention—a very well developed and thick conception of public order, "law and order"—strikes me as Devlinite and conservative, a traditionally conservative argument for the protection of morality. So, I was wondering whether you see it that way, whether you see differences, how you would react to that thought?

CHELINI-PONT: From my point of view, a minimalist position means that, if ever there is a public morality—well, who is responsible for it? Society, of course, but who in society? The churches, some groups against others? So, for me, a minimalist position on the state, in the European tradition, means that you let the groups in society compete for the moral and collective conscience. For me, the conservative position is the second one more than the first.

DEGIROLAMI: And it's the state that ought to be responsible for public morality?

CHELINI-PONT: It's more natural for us to see the state as the warrant of our society. In the French conception, there's not a strong separation between the state and society, I think.

MOVSESIAN: Thank you. Nina Crimm?
CRIMM: Yes, my question is for Emmanuel. You spoke very forcefully and convincingly about the rules regarding the relation between the state and the Catholic Church, very much on a legal basis. And you used the words, there's "absolutely no problem" with respect to laïcité. I'm wondering whether, as a law professor, you could speak to whether, on a philosophical level, not a legal level, there is any disharmony that you see with respect to laïcité.

TAWIL: It's not my business to consider things on a philosophical level. I am just a jurist and a canonist. So, I am not interested in a philosophical level. From a legal point of view, there's absolutely no problem with laïcité. And my job is to deal with that. It's not to try to determine if there is any kind of contradiction on a philosophical level. I don't know why I would have to determine if there is a contradiction on a philosophical level—why not on a theological level? From that point of view, what is the difference between the philosophical and the theological level?

MOVSESIAN: If I might comment on that answer, there might be a difference in how Americans and Europeans understand the role of law professors. For American law professors, it would not be unusual to think of issues on a philosophical, as well as a legal, level. I wonder whether that difference in the understanding of the role of the jurist may be reflected in the last exchange.

Mike Simons?

SIMONS: This is challenging, because I have a question for each of the speakers, I think, but I'll pick one.

Rosemary, in your presentation, you talked about the possibility that the approach to headscarves in schools, or, perhaps, the full veil in society, is preventing Muslims from becoming more fully integrated into French society. Do you see that as similar to, or different from, the push and pull in the United States between public schools and Catholics in the last century? Catholics actually
left and established their own system of parochial schools. They eventually became fully integrated into society, but not probably for many decades. Do you see something similar happening in France?

SALOMONE: I—first looking at the French situation, I think there is a danger of isolating these groups, by denying them this accommodation within the public school setting. And what happened as a result of the ban itself is that some—and there are some numbers, I don't know how valid they are—a certain number of girls just went to other countries to be educated. A certain number of girls went to Muslim schools. A certain number of girls just left school entirely and were uneducated. And I feel that, really, this whole notion of promoting gender equality, contained within the ban itself, was turned on its head, because, in the interest of promoting gender equality, they were ultimately denying these girls equal educational opportunity.

But getting back to your question, those same arguments have surrounded public schools—that, ultimately, the event that triggered the Catholic school movement in the United States was the funding issue. When the funding was denied to them, they went off. We could only look at that in hindsight, now, and determine that it really didn't isolate them in terms of values—that Catholic schools pretty much adhered to the curriculum of the public schools, and maintained the same standards as the public schools.

It's difficult to foresee what would happen with the Muslim situation. Are—and this is contestable—are Muslim values so far different from the mainstream that you really are going to isolate these communities even further, and particularly the more radical fringe elements of those communities, or ultimately will they take a path that's similar to American Catholics at that time? Because, from the perspective of mainstream American Protestants, at that point, Catholics were pretty frightening as well.
MOVSESIAN: Brett?

SCHARFFS: Well, I'll exercise slightly less restraint than Michael and ask a couple of questions, but I'll try to keep them short. For Blandine, I was really struck by your argument that religious freedom is the weakest of the arguments in favor of protecting the veil—

CHELINI-PONT: In French context, I think.

SCHARFFS: —in the French context. And you talked about “public order” as a basis for a limitation of religious freedom. And it seemed, as has been noted, quite a broad conception of public order. You used phrases like “spirit of the laws” and “values of the constitution.” My question is, I wonder whether there’s a translation issue here. Because, from an Anglo-American perspective, we tend to think of “public order” as requiring quite a high level of need before it justifies a limitation on freedom, whereas in French we have the notion of ordre publique, which seems to be much closer to what you were describing. So, my question is, are you defending something closer to ordre publique, or do you think the concept of public order is really so broad that it justifies a broad set of limitations?

My question for Nathalie—Nathalie, you’ve written on the distinction between secularism and secularity. And you talked about the hard-line defenders of laïcité. And my question is whether this form of secularism is a thick, substantive ideology that is itself deeply illiberal, in the classical sense of liberalism, and whether it’s subject to becoming its own brand of fundamentalism, which is I think something that observers from outside France wonder and fear.

And, finally, for Emmanuel—laïcité is often translated as “separation.” It’s clear that’s an inadequate translation. Should we translate it instead as “entanglement?” That came up in a suggestion that Douglas made earlier.
CHELINI-PONT: “Public order” is not defined. It is not defined in our system, nor in the European system. I defend no particular aspect or side, but, as a jurist, one can—as a judge, especially—one can take a broad view of the concept and integrate within it concepts other than the traditional ones, like security and tranquility and peace in the streets. So, that’s what I wanted to explain. I think we can really enlarge this notion of “public order” to cover the protection of common values. I am sure it’s possible for judges in our system to interpret it that way and also in the European Court of Human Rights.

MOVSESIAN: Nathalie, did you wish to respond?

CARON: Yes, thank you. Well, yes, I am aware of what you’re talking about, the fact that—if I understood your question—the fact that hard-line defenders of laïcité, the people I mentioned, those who defend laïcité de combat, might be called, in turn, fundamentalists. This is what you are talking about, right? I know that in the United States, people like Hitchens and Harris have been called fundamentalists, and some Christians have even said that they are more fundamentalist than the fundamentalists that they criticize. But I think that it’s irrelevant to talk about fundamentalism to refer to these people. First, because, historically, the word refers to a movement which emerged in the late nineteenth century in the U.S. as a response to the success of Protestant liberalism and emphasized the inerrancy of the Bible. Then, if one accepts to use the word in a broad sense, it’s true that certain people are somewhat intolerant of religion and want to keep religion private. And one of the main differences that I see between the U.S. and France—and this has not been discussed much yet—is the fact that we have a different view of the role and place of religion in the public sphere. In the U.S., you accept much more than we do here the actual presence of religion in the public arena—although here we have lots of churches, churches all over the place, as you know—indeed, we heard church bells here a moment ago. So,
religion is here. However, we have a problem with the visibility of religion, its public presence, that you don’t have in the U.S. I’m not saying that it’s better or worse, but we have to distinguish between several levels.

I agree with you that, in some cases, those hard-line defenders of laïcité are what you might call a-religious, or anti-religious, and that there is a problem here. And I don’t share that kind of approach, but this is my personal point of view. But they’re not all like that. And I’m not sure that the people I talked about—I mean, the people of *Le Monde Diplomate*—are in that category. I would not call them anti-religious. What I see is a dilemma or a contradiction. It’s kind of difficult to reconcile some of their positions. They say, “you have to be critical, you have to keep your mind working,” and defend free-thinking, doubt, and skepticism—and, again, they’re not all atheists. In France, only about fifteen percent of the population is atheist. But, anyway, it’s hard to reconcile saying that skepticism is better than Christianity, but at the same time that everybody is free to believe whatever they want. So, I see a dilemma, more than fundamentalism. “Fundamentalist” would not be the right way to put it.

MOVSESIAN: Emmanuel?

TAWIL: Laïcité does not mean separation. It’s absolutely clear. Laïcité just means what the Conseil d’État says it means: religious freedom, neutrality, and pluralism. Laïcité does not prohibit any kind of public funding to religion. It’s clear. So, from a juridical point of view, laïcité is not separation. And the law of separation, which is in force for just a part of French territory, is not implied by the constitutional principle of laïcité. This is very clear to me and very clear also to the Conseil d’État, and it should be clear to French jurists, even if they don’t know the cases decided by the Conseil d’État. The problem is more the ignorance of most of my
colleagues in France, rather than what is said by the Conseil d'État, because the Conseil d'État is really clear.

I just want to add something. The reason I decided to present, as my topic, the agreements between France and the Holy See, was that I wanted to shock you. I wanted to make you understand that the veil is not the only question which the French system presents. I wanted you to understand that our system is very, very, very different from the image you may have of it—

SIMONS: And, Emmanuel, can I just ask a factual question? What did you mean by "liturgical honors?"

TAWIL: For example, getting censed by the priest. Also, in Jerusalem, the French general consul may kiss the Gospel after the reading of the Gospel during the Mass.

SIMONS: And a layperson would do that?

TAWIL: Yes, because he is a representative of France.

MOVSESIAN: Okay, I have several people who want to speak. Let's have Doug, and then Nathalie, and then Blandine.

LAYCOCK: Marc DeGirolami did a nice bit of political jujitsu by saying that banning the veil is like these conservative, reactionary regulators of morals in England and America. But, of course, there were conservative and reactionary regulators of morals when conservatives and reactionaries were dominant. Now, as the left is winning on some of these issues, of course the left is doing exactly the same thing. The current controversy in America that most reminds me of the veil is this case the Supreme Court is about to decide, Christian Legal Society v. Martinez, where the Hastings Law School says that if you're a student association and you have an actual statement of faith that you make people adhere to, you cannot be a recognized student organization. And the whole American
educational establishment is lined up in support of that. I think the educational establishment is going to lose. But the point is, the left is doing the same thing in America that is going on here, trying to restrict religious expression in public institutions.

I also have a factual question [addressing Professor Tawil], if you know without having to go through your whole list. How many of these nineteen treaties apply to the bulk of France? How many are only about Alsace-Moselle?

TAWIL: Three.
LAYCOCK: Three for the whole country?
TAWIL: No, three for Alsace-Moselle and—
LAYCOCK: Oh, sixteen for the whole country?
TAWIL: Yeah.
LAYCOCK: Wow.
TAWIL: Just three for Alsace-Moselle. Most of the agreements concern the appointment of bishops and the French establishments in Rome.

MOVSESIAN: Okay, Nathalie, and then Blandine.

CARON: It's a comment for Emmanuel. You said that the 2008 agreement between France and the Vatican recognizing diplomas delivered by Catholic universities—Emmanuel said that some of his colleagues didn't know much about it, but, I mean, that's the case of most French people. We don't know the details of the agreements between France and the Vatican, right? You agree with that?

43 Predictions are dangerous things; the educational establishment won, and the religious students lost. See Christian Legal Soc'y v. Martinez, 130 S. Ct. 2971, 2984–95 (2010).
TAWIL: Uh-huh.\(^{44}\)

CARON: Okay. So, we have different interpretations of what laïcité means. But this agreement, well, we heard about it, especially in the universities. And we were not pleased about it when we did. That agreement created a stir in public universities, because we heard that Sarkozy had talked to the Pope and they had decided, just between the two of them, that the diplomas delivered by Catholic universities would be officially recognized, hence challenging the monopoly of the State on the granting of diplomas.\(^{45}\) But it seems that the Minister of Higher Education had not been consulted. I don’t know what happened, really. How about that? You said it’s not a problem. Isn’t it a problem?

TAWIL: When you say that the Minister had not been consulted—in fact, I don’t know if she had been consulted, because I am not a member of her staff. But I have very, very serious doubts about that, because there were drafts presented to many scholars, and I have very serious doubts about the fact that the Minister had not been consulted before.\(^{46}\)

MOVSESIAN: We’re already over time, so one more comment. Blandine?

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\(^{44}\) This agreement was promulgated in Loi 2009-427 du 16 avril 2009 portant publication de l’accord entre la République française et le Saint-Siège sur la reconnaissance des grades et diplômes dans l’enseignement supérieur (ensemble un protocole additionnel d’application), signé à Paris le 18 décembre 2008 (1) [Law 2009-427 of April 16, 2009 Promulgating the Agreement Between the French Republic and the Holy See on the Recognition of Degrees and Diplomas in Higher Education (all under an Additional Protocol), Signed in Paris on December 18, 2008 (1)], JOURNAL OFFICIEL DE LA REPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Apr. 16, 2009, p. 6746.


CHELINI-PONT: Yes, I would like to ask Nathalie if Christopher Hitchens speaks about the American Radical Enlightenment or the French Radical Enlightenment?

CARON: He refers to both. In the eighteenth century, radical Enlightenment ideas circulated in North America. When you read the book, *God Is Not Great*, you realize that Hitchens actually relies on people like Thomas Paine. I don’t know if you are all here familiar with Thomas Paine, but he’s the author of *The Age of Reason*, *Common Sense*, and *The Rights of Man*. Hitchens uses Thomas Paine a lot—who himself drew from the French philosophers and also the English Deists—and also Jefferson, and also Voltaire, Rousseau, Diderot.47

MOVSESIAN: Thank you. That concludes our first panel.

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