

THE STASI REPORT:

THE REPORT OF THE COMMITTEE OF REFLECTION
ON THE APPLICATION OF THE PRINCIPLE OF SECULARITY
IN THE REPUBLIC

by
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INTRODUCTION

On December 11, 2003, Bernard Stasi, Mediator of the Republic, presented to Jacques Chirac, President of France, the report of the Commission for Reflecting on the Application of the Principle of Secularity in the Republic. This document, commonly called the *Stasi Report*, immediately became an international topic of discussion. A glance at the immense amount of commentary on French Web sites shows that the discussion centered on the recommendation against wearing noticeable religious symbols, particularly the Islamic veil, in schools, almost to the exclusion of all other issues considered in the report. The reader of this volume will note that clothing in schools is only one of many topics considered in the report. The report deals with a wide variety of matters—the relationship between doctor and patient, the behavior of visitors to a hospital, the relationship between workers in the commercial workplace, the delivery of social services, chaplains in prisons and in the armed forces, and even the desirability of an institute of Islamic studies. Although the “affair of the veil” may have been the spark that started the explosion of interest, this wide-ranging report has a different focus.

The commission was charged with focusing on *laïcité*, which I have translated as *secularity*. (Others translate the term with *secularism*; see below.) This is a distinctively French notion and is at the heart of the idea of the “French exception.” Americans who think that they have given special importance to the separation of church and state will find that the French are not impressed with our practice or our theory. The reader will note that the Stasi commission considers religion plays a far more important part in politics in America than it does in several European countries. In regard to theory, perhaps a passage from an article by Professor Michel Troper, Director of the Center for the Theory of Law

(Centre de Theorie du Droit) at the University of Paris, would be suggestive:

If we speak of secularism, *laïcité*, in order to distinguish it from the American system, or from the French system before the adoption of secularism in 1905, we intend merely to describe an ideology as distinguished from another ideology.

If it is true, therefore, that from a sociological point of view, there always exists a separation between religion and state, and that from a legal point of view there never exists a separation between religion and state, one can nonetheless attempt to preserve a classification while recognizing that the classification deals with ideologies affecting the content of legal rules.¹

The French pride themselves on having a secular state, but that notion has implications far beyond what Americans might expect.

BACKGROUND

The concept of *laïcité* is at least as important to French jurisprudence as the principle of separation of church and state is to American jurisprudence. The First Amendment must be mined or Jefferson's letter to the Danbury Baptists quoted to find the principle. However, in principle *laïcité* has been a part of French law for two hundred years, although the word first appeared around 1870. The reader should note that the Law of Separation of Church and State, usually called the law of 1905, although it is a statute, has a place in French thought similar to the place of the First Amendment in American thought.

Before dealing with the development of the concept of *laïcité*, some attention to its meaning is appropriate. In this translation *laïcité* has been translated by the term *secularity*, not by *secularism*. French has two closely related terms, *laïcisme* and *sécularization*. For many, *laïcisme* suggests hostility to religion.² *Sécularization* has been understood to mean societies'

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1. Michel Troper, "Religion and Constitutional Rights: French Secularism, or *Laïcité*," 21 (2000) *Cardozo Law Review* 1267, 1271. A brief note cannot do justice to the subtlety of the analysis in this illuminating article.
 2. "[S]i l'on entend par . . . [*laïcisme*] une doctrine qui ferait de la *laïcité* une philosophie complète et guidée par la volonté d'expulser toute foi religieuse du coeur de l'homme." ("If by [*laïcisme*] one means a doctrine which makes *secularity* a complete philosophy guided by the will to expel all religious faith from the heart of man.") Guy Coq, *Laïcité et république: Le Lien nécessaire*. Paris: Editions du Félin, 1995, p. 17.

loss of religion.³ Neither of these two other terms appears in the *Report to the President of the Republic*, the Stasi Report. As the reader of this report will see, the Commission has taken pains to repudiate any suggestion of hostility toward religion or of a concern with removing religion from France.

Laïcité, secularity, has developed and been enshrined in French law since the fall of the Ancien Regime. The French Revolution was a repudiation of the notion of the divine right of the king; in separate actions of the National Assembly the privileges of the clergy were revoked, the state no longer collected a tithe for the Catholic Church, and the property of the Church was turned over to the state. Perhaps most importantly, The Rights of Man and the Citizen was adopted in 1789 with Article 10 providing for religious freedom: "No one should be harassed because of his opinions, even religious opinions, as long as their manifestation does not disrupt public order established by law."⁴ The doctrinaire opposition to religion shared by some of the revolutionaries was not unambiguously shared by Napoleon. Seeking to buttress his position, he sought the support of the Papacy through the Concordat of 1802; however, besides providing for nomination of bishops by the state and requiring the approval by the state of Vatican documents before their publication, the Concordat specified that marriage was civil (although a subsequent Church service could be performed) and provided for liberty of conscience and religious freedom for Protestants, clearly confirming a degree of secularity. At the same time, official recognition was given to Lutheranism and Reformed Protestantism (Judaism was given official recognition in 1808).⁵ Further limiting the activities of the Catholic Church, laws were passed requiring that people practicing medicine had to have a degree in medicine (1803) and requiring that anyone providing public education had to have a degree from a university (1806).⁶

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3. "Et aujourd'hui encore, il est assez courant d'appeler sécularisation un mouvement historique de très longue durée au cours duquel les sociétés ont abandonné l'idée de se fonder sur une religion." ("And today it is still very common to call secularization an historic movement of long duration, in the course of which societies have abandoned the idea of being founded on a religion.") Coq, p. 19.
 4. "Nul ne doit être inquiété pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l'ordre public établi par la loi."
 5. Jean Baubérot, *Vers un nouveau pacte laïque?* Paris: Seuil, 1990, p. 33.
 6. Baubérot, pp. 36, 37.

This entire process has been called “the first secularization.”⁷ On Baubérot’s analysis, this process has three characteristics: institutional fragmentation (religion—and the Catholic Church in particular—no longer controlled all phases of life but was reduced to being one social institution among others), recognition of legitimacy (religion was accepted because it performed a social service), and recognition of various denominations.⁸

In the West, the nineteenth century saw an enormous increase in concern with the state’s taking responsibility for education. In America during the 1850s, for instance, free public education was first provided in many states, such as Indiana (1852), Ohio (1854), Illinois (1855), and Minnesota (1858). Massachusetts enacted the Compulsory Attendance Act of 1852, which required that all children between the ages of eight and fourteen attend school for at least three months of each year. The two Morrel Acts were passed in 1862, providing for land grant colleges, and in 1880, providing land grant colleges for Blacks. In England the Elementary Education Act of 1870 introduced free education in schools funded by the government. In France a crucial event was the Guizot law (*loi Guizot*—1833), named for François Guizot, Minister of Public Education; this law required each township or group of townships to open a primary school and to pay the teacher(s).⁹ Thus, the state took responsibility for education, although the Catholic Church continued to operate its schools. The Charter of 1830 had called for free education, and the Constitution of 1848 specified that “Education is free. The freedom of education is exercised according to the capacity and morality determined by the laws and under the surveillance of the State.” The Falloux law (*loi Falloux*—1850), named for the Minister of Public Instruction, the Count de Falloux, allowed state units to avoid building a school and paying teachers by paying for the education of the children of poor families attending private schools, but Falloux resisted the urging of certain Catholics that he close the university operated by the State.¹⁰ Each of these laws gave responsibility for education to the state, although each allowed the church to continue to play a role.

The term *laïcité* appeared for the first time more than half a century after the French Revolution. It was used a few times during the Paris Commune (1871), but it was treated as a neologism by Ferdinand Buisson

7. Baubérot, p. 33.

8. Baubérot, p. 44.

9. Christian Nique, *Comment l'école devint une affaire d'Etat? (1815–1840)*. Paris: Nathan, 1990, p. 116.

10. Coq, p. 45.

when he explained that “The main idea, the fundamental notion of the secular State—that is to say, the profound boundary between the temporal and the spiritual—has entered in our way of life to an extent that it cannot be removed.”¹¹ His lengthy article, which introduces *laïcité* to widespread usage, is more than the explanation of a term. With an account of increasing taking over the task of education from the church in Holland, Switzerland, Belgium, and even the United States, Boisson made a fervent appeal for the secularization of education, remarking that “The French legislation of 1882 is one of those which have most logically and most completely established the system of secularity.”¹² Jules Ferry, Minister of Education at this time, obtained the adoption of laws that made primary education secular, free, and obligatory, as well as available for both sexes.¹³ The centenary of the *loi Ferry* (which was actually adopted on March 28, 1882) was celebrated on February 3, 1981, to commemorate the law creating the “Republican school” as one of the “secular laws.”¹⁴

The debate on the role and power of the Catholic Church continued into the opening years of the twentieth century. The climax came with the law adopted on August 12, 1905, the Law Concerning Separation of Church and State. The forty-four articles of this law require that the property of existing churches be turned over the State, with the State taking on the expense of maintaining the properties. The churches could continue to use the properties. The crucial parts of the law are the following:

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11. “[L]a grand idée, la notion fondamentale de l’Etat laïque, c’est-à-dire la délimitation profonde entre le temporel et le spirituel, est entrée dans nos mœurs de manière à ne plus en sortir.” *Dictionnaire de pédagogie et d’instruction primair*. Paris: Hachette, 1878, p. 1469.
 12. La législation français de 1882 est une de celles qui ont le plus logiquement et le plus complètement établi le régime de la laïcité.” p. 1470.
 13. The law of 1882 (*loi Jules Ferry*), Art. 4 : “l’instruction primaire est obligatoire pour les enfants des deux sexes âgés de 6 ans révolus à 13 ans révolus; elle peut être donnée soit dans les établissements d’instruction primaire ou secondaire, soit dans les écoles publiques ou libres, soit dans les familles par le père de famille lui même ou par toute personne qu’il aura choisie” (“Primary school is obligatory for children of both sexes from six years old to thirteen years old; they can receive it in primary schools or secondary schools, in public schools or private schools, be they from families by the father of the family or by other persons that he chooses”). (In France, private schools are called *free* schools, as in England private schools are called *public* schools.) See also Coq, p. 46.
 14. Jean Baubèrot, *Vers un nouveau pacte laïque?* Paris: Seuil, 1990, p. 7.

Article 1: The Republic ensures freedom of conscience. It guarantees the free exercise of religion only under the restrictions hereafter adopted in the interest of public order.

Article 2: The Republic does not recognize, nor employ, nor subsidize any religion. Consequently, from the 1st of January after the promulgation of this law, all expenses related to the practice of religion will be abolished from the budgets of the State, the departments, and communities. However, said budgets may include expenses that are related to chaplains's services meant to assure the free exercise of religion in public facilities such as high schools, secondary schools, primary schools, hospitals, asylums, and prisons. Public institutions of worship are abolished, except for the arrangements stated in Article 3.

Article 4: Within a period of one year after the adoption of this law, moveable and immovable property such as manses, factories, meeting places, consistories, and other public facilities for worship, as well as all expenses and obligations attached to them and with their special status, will be transferred by the legal representatives of these facilities to associations which, in conformity with the rules of general religious organizations of which they agree to ensure the practice, will be legally formed, following the requirements of Article 19, for the exercise of this religion in the former district of said institutions.

Article 19: These associations must exist exclusively to carry out the activities of worship and be composed of at least:

Seven people, in communities of less than 1,000 people;

Fifteen people, in communities of 1,000 to 20,000 people:

Twenty-five mature people, who are domiciled or resident in the religious district with more than 20,000;

Each of their members can withdraw at any time, after payment of the amounts due and those for the current year have been made, all clauses to the contrary notwithstanding.

All clauses to the contrary notwithstanding, the financial and legal administration of the property accomplished by the directors or administrators will be, at least once a year, presented for the control of the general assembly of members of the association and submitted for its approval.

However, the associations can receive, besides the assessments provided by Article 6 of the law of July 1, 1901, the product of offerings and collections for the expenses of the church, to cover payments: for religious ceremonies and services, even by endowment; for the rental of pews and seats; for the provision of objects to be used for funeral services in religious buildings and for the decoration of these buildings.

Article 1: La République assure la liberté de conscience. Elle garantit le libre exercice des cultes sous les seules restrictions édictées ci-après dans l'intérêt de l'ordre public.

Article 2: La République ne reconnaît, ne salarie ni ne subventionne aucun culte. En conséquence, à partir du 1er janvier qui suivra la promulgation de la présente loi, seront supprimées des budgets de l'Etat, des départements et des communes, toutes dépenses relatives à l'exercice des cultes. Pourront toutefois être inscrites auxdits budgets les dépenses relatives à des services d'aumônerie et destinées à assurer le libre exercice des cultes dans les établissements publics tels que lycées, collèges, écoles, hospices, asiles et prisons. Les établissements publics du culte sont supprimés, sous réserve des dispositions énoncées à l'article 3.

Article 4: Dans le délai d'un an après la promulgation de la présente loi, les biens mobiliers et immobiliers des menses, fabriques, conseils presbytéraux, consistoires et autres établissements publics du culte seront, avec toutes les charges et obligations qui les grèvent et avec leur affectation spéciale, transférés par les représentants légaux de ces établissements aux associations qui, en se conformant aux règles d'organisation générale du culte dont elles se proposent d'assurer l'exercice, se seront légalement formées, suivant les prescriptions de l'article 19, pour l'exercice de ce culte dans les anciennes circonscriptions desdits établissements.

Article 19: Ces associations devront avoir exclusivement pour objet l'exercice d'un culte et être composées au moins:

Dans les communes de moins de 1,000 habitants, de sept personnes;

Dans les communes de 1,000 à 20,000 habitants, de quinze personnes;

Dans les communes dont le nombre des habitants est supérieur à 20,000, de vingt-cinq personnes majeures, domiciliées ou résidant dans la circonscription religieuse.

Chacun de leurs membres pourra s'en retirer en tout temps, après paiement des cotisations échues et de celles de l'année courante, nonobstant toute clause contraire.

Nonobstant toute clause contraire des statuts, les actes de gestion financière et d'administration légale des biens accomplis par les directeurs ou administrateurs seront, chaque année au moins, présentés au contrôle de l'assemblée générale des membres de l'association et soumis à son approbation.

Les associations pourront recevoir, en outre des cotisations prévues par l'article 6 de la loi du 1er juillet 1901, le produit des quêtes et collectes pour les frais du culte, percevoir des rétributions: pour les cérémonies et services religieux même par fondation; pour la location des bancs et sièges; pour la fourniture des

objets destinés au service des funérailles dans les édifices religieux et à la décoration de ces édifices.

Elles pourront verser, sans donner lieu à perception de droits, le surplus de leurs recettes à d'autres associations constituées pour le même objet.

Elles ne pourront, sous quelque forme que ce soit, recevoir des subventions de l'Etat, des départements ou des communes. Ne sont pas considérées comme subventions les somme allouées pour réparations aux monuments classés.

Having ensured liberty of conscience in Article 1, the statute uses Articles 2 and 4 to set up the associations which are referred to frequently in the Stasi Report. The churches existing in 1905 had to turn over all their property to the state and form associations to manage the operation of those properties. The state took over the ownership of the properties, the debts on those properties, and the maintenance costs. The State then turned over to the association the actual use of the properties. In effect, the association formed by the church, rather than the church itself, operates the hospital and the asylum, even the church itself. The church develops its own internal rules; the State has no control over those rules, and thus the State deals only with the association. Thus freedom of religion is ensured. The State does not interfere with religion and the Church has no direct dealings with the State.

Furthermore, Article 31 criminalizes interference with religious freedom:

Anyone who, by way of violent or threatening acts against an individual, either to cause him to fear losing his employment or threatening to harm him, his family, or his fortune, pressure him to follow or not follow a religion, to be part of or to stop being part of a cultural association, or to contribute or to not contribute to the support, will be subject to a fine of sixteen francs (16 fr.) to two hundred francs (200 fr.) and imprisonment of six days to two months or one of these two penalties.¹⁵

15. Sont punis d'une amende de seize francs (16 fr.) à deux cents francs (200 fr.) et d'un emprisonnement de six jours à deux mois ou de l'une de ces deux peines seulement ceux qui, soit par voies de fait, violences ou menaces contre un individu, soit en lui faisant craindre de perdre son emploi ou d'exposer à un dommage sa personne, sa famille ou sa fortune, l'auront déterminé à exercer ou à s'abstenir d'exercer un culte, à faire partie ou à cesser de faire partie d'une association culturelle, à contribuer ou à s'abstenir de contribuer aux frais d'un culte.

This article clearly provides a basis for some of the concerns and recommendations found in the Stasi Report, just as it provides support for a number of decisions by the Council of State.¹⁶

This arrangement went largely without challenge until World War II. The Vichy government approved a subsidy for private schools; however, soon after the liberation of France, this arrangement was ended.¹⁷ Nevertheless, the appeal for support did not go away. The Catholic hierarchy, the Mouvement Républicain Populaire, Démocrates-Sociaux (MRP—the Popular Republican Movement, Social Democrats) promoted a return to subsidizing private schools. The Fédération des Conseils de Parents de Défense Laïques (FCPE—the Federation of Councils of Parents for Secular Defense) and the Comité National d'Action Laïque (CNAL—the National Committee for Secular Action) fought for a return to the principles of the law of 1905.

The nature of the conflict in the first decades after World War II is found in *Toward a French Reconciliation: Twentieth-Century Secularity*, published in 1958 by Albert Bayet, the president of The French League for Education.¹⁸ In coming to the defense of secularity, Bayet confronts what he considers the two greatest threats, hostility to freedom of thought and freedom of religion within Roman Catholicism from Clement of Alexandria and Thomas Aquinas to Pope Pius VI, Pope Pius VII, Pope Gregory XVI, Pope Pius XI, and Pope Leo XIII and the challenge to freedom of thought on the part of science and particularly the positivism of August Comte.¹⁹ The thrust of Bayet's argument is found in his insistence that "We are not content with 'toleration,' we respect the faiths that are not ours, we endeavor to do justice to them; a Christian does not consider himself diminished because he understands, because he loves that which is humanly great in Islam or in Buddhism."²⁰ Through the 1980s the conflict continued with the concerns focusing on whether Catholic schools would be subsidized or whether laws should be adopted to do away with private schools.

16. Robert, n. 15.

17. Coq, p. 47.

18. *Pour une réconciliation française: twentieth-century secularity*. Paris: Hachette, 1958.

19. P. 45, 50–52.

20. "Nous ne nous contentons pas de 'tolérer,' nous respectons les fois qui ne sont pas les nôtres, nous nous efforçons de leur rendre justice; un Chrétien ne se croit pas diminué parce qu'il comprend, parce qu'il aime ce qu'il y a d'humainement grand dans l'Islam ou dans le bouddhisme," p. 242.

In 1989 that changed. Algeria, which had been colonized by France in the mid-nineteenth century, had become independent in 1962, after many years of armed conflict. Because of scarce employment opportunities in that portion of North Africa known as the *Mahgrib* (particularly Algeria, Morocco, and Tunisia), many sought work in Europe, especially France. Although France and Algeria sought to restrain migration to France, the number of Algerian workers and their family members, all or nearly all Muslims, in France rapidly increased: 1945—350,000; 1964—500,000; early 1980s—800,000; today—5,000,000. (The total population of France is roughly 60,000,000.) Before 1973, the families of Arab workers in France frequently remained behind in North Africa; when European nations adopted more restrictive immigration policies, many of these workers brought their families to France.²¹ One result is that Islam is the second largest religion in France, and some cities have very large Muslim populations. In Riboux, an ancient textile center with a population of about 98,000, 30% to 50% of the population is Muslim.²² The result has been a vast expansion of the use of social services—schools, hospitals, prisons—by Arab immigrants. In the fall of 1989 three Muslim girls, Samira S. and the sisters Fatima and Leïla A., ninth and tenth graders at Gabriel-Havez School in Creil, came into conflict with the school administration because of their insistence upon wearing the Islamic veil.²³ This event is consistently referred to as the event which initiated the “affair of the veil” and which, in the minds of many, is what led to the Stasi Report.

As a matter of fact, the broader issue arose before the 1989–90 school year. For some years some Israeli students had refused to attend classes on Saturdays and returned to school about ten days after the beginning of

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21. The facts in this paragraph are taken from a Library of Congress page on Algeria, except for the figure of 5,000,000 which comes from Ternisien Xavier, “Le ramadan, temps fort de la pratique ordinaire des musulmans de France,” *Le Monde*, 20 Nov. 2001. Lexis-Nexis, Apr. 6, 2004; June 9, 2004.
 22. Dalil Kenz, “Dans l’ancienne capital textile, les musulmans représenteraient de 30 à 50 % de la population; Tiraillements pour une intégration : l’exemple de Roubaux,” *Le Figaro*, 17 June 2003. Lexis-Nexis, November 4, 2003; June 9, 2004.
 23. For a much more complete account of this matter than I can provide here, I recommend “At the Heart of the ‘Affair’” by Professor Luis Cardoso, who had at least one of the girls in his class at Gabriel-Havez; an English translation of his account can be found at <<http://www.unc/depts/europe/conference/Veil2000/articles/translations/Cardoso.doc>>

classes. In June 1989, the administration decided that “absence from class for religious reasons would no longer be tolerated.”²⁴ Some of the faculty opined that the same response should be made to the wearing of the Islamic veil in class. When the 1989–90 school year began, Fatima and Leïla A. appeared at school weeks late and refused to attend classes. Over the next few months various meetings were held and compromises attempted. The news media focused on the story and, inaccurately, claimed the girls had been expelled.

Regardless of the actual facts of the process at Gabriel-Hervé, this event seemed to have initiated a series of conflicts that spread across France. In December 1990, Jean-Jaurés High School in Monfermeil adopted a regulation specifying that “the wearing of all distinctive symbols, clothing or otherwise, religious, political, or philosophic, is strictly forbidden.”²⁵ On December 14, 1990, Hatice and Ayse Balo along with Samira Kherouaa were expelled from the school for wearing the Islamic veil. On December 18, 1993, at Emmanuel-Mounier High School in Grenoble a co-ed was expelled after she insisted upon wearing a veil covering her head in a gymnastics course.²⁶ On May 10, 1994, two students were expelled from Xavier-Bichat High School in Nantua for insisting upon wearing the veil during a physical education class.²⁷ It goes without saying that along the way a number of religious, secular, and educational organizations became involved, sometimes in negotiations at the individual institution, sometimes through comments and position papers.

In this situation François Bayrou, then Minister of Education, was called upon to act. On September 20, 1994, he issued a “circular” (translated on page 1) which contains ideas quite close to those found in the Stasi Report. He maintained:

In France, the national project and the republican project are have merged with a certain idea of the citizen. This French idea of the nation

24. Cardoso, par. 2.

25. “[L]e port de tout signe distinctif, vestimentaire ou autre, d’ordre religieux, politique ou philosophique, est strictement interdit.” Bernard Philippe, “Les Suites des Polémiques de 1989 Le Conseil d’Etat Annule l’Exclusion de Trois Collégiennes Portant le Voile Islamique,” *Le Monde*, 4 Nov. 1992. Lexis-Nexis, 23 October 2003, 7 June 2004.

26. Aulagnon Michele and Bernard Philippe, “La Circulaire de François Bayrou à Propos du Port du Foulard Islamique Cinq Ans de Polémique,” *Le Monde*, September 21, 1994. Lexis-Nexis, March 26, 2004; June 7, 2004.

27. Bernard Philippe, “La France et l’islam et société: la saga des foulards,” *Le Monde*, October 13, 1994. Lexis-Nexis, March 26, 2004; June 7, 2004.

and the Republic is, naturally, respectful of all beliefs, in particular religious and political convictions and cultural traditions. But it clearly excludes the splintering of the nation into separate communities, indifferent to one another, considering only their own rules and their own laws, engaged in simple co-existence.²⁸

He went on to provide the following policy:

In institutions students are allowed to wear distinct symbols, manifesting their personal attachment to convictions, especially religious. But ostentatious symbols, which constitute in themselves elements of proselytism or of discrimination, are forbidden. Provocative behavior, failure to fulfill obligations of conscientiousness and safety, acts susceptible of being construed as pressure on other students, interfering with involvement in activities, or disrupting the order of the institution are forbidden.

Nobody should be surprised that this circular became as much an object of controversy as the Islamic veil in schools. The first sentence goes back to Article 10 of the Rights of Man and the Citizen. The second sentence is inspired by the law of 1905. However, a crucial problem was introduced by the term, *ostentatoires*, which I have translated as *ostentatious*. It appears in the Stasi Report (2.2.2, 2.2.3, 3.2.1.3, 4.2, and 4.2.2.1), which also uses the term *ostensible* (for instance in 3.2.1.1), which I have translated with *noticeable*. What constitutes an ostentatious symbol? What constitutes a non-ostentatious symbol? This policy immediately placed school administrators in the difficult position of having to make such judgments—with all of the attendant problems, including litigation, disruption of the educational environment by demonstrations, and controversy in the news media. Through the turn of the century hundreds of articles appeared in the French press concerning the Islamic veil, particularly in schools and in the workplace.

The final decades of the twentieth century saw the introduction and expansion of a number of other religions in France—Jehovah's Witnesses (which had a presence going back to before World War II), Seventh Day Adventists, Scientologists, and groups less known in America, such as the Darbists. The consternation created by the rapid growth of such sects, as well as of the Muslim population in France—and the accompanying demands on schools, businesses, and social services—generated varied responses. In 1996 the government formed the International Cult

28. Quoted in Coq, p. 280. I have included the text and translation of the entire document at the end of this essay.

Surveillance Center (l'Observatoire international des sects). In 1998 this was replaced with the Inter-Ministerial Mission for the Fight Against Cults (Mission interministerielle de lutte contre les sects—MILS) with a mission of finding better ways to analyze cults and to improve fighting them!²⁹ In December 1999, the Senate Commission on Laws adopted a resolution “aimed at dissolving ‘malicious groups’.”³⁰ The Ministry of the Interior had to respond to this initiative by issuing a statement on December 20, 1999, specifying that “the designation as part of the cult movement that is given to a group by the various parliamentary reports should not be considered enough alone to impute any kind of threat to public order by that group.”³¹ Furthermore, early in 2000 a law was adopted to criminalize “mental manipulation” defined in the statute to mean “fraudulent abuse of ignorance or weakness.”³² However, reason for anxiety remained because of uncertainty about who might be charged under the new laws. As Robert offered, “After all, certain rules or practices, respected through the ages by well-known religious congregations, such as fasting, poverty, chastity, obedience, and becoming part of a monastic order, could one day also be considered seriously detrimental to the individual.”³³

One of the problems the French government has faced is the problem of finding a way of communicating with Muslims in France. In 1990 the Conseil de réflexion sur l’Islam de France (Council for Reflection on Islam in France—CORIF) was formed. This organization helped in a variety of useful causes, for instance the construction of mosques and the formation of religious sections in public cemeteries.³⁴ In 2003 Islamic organizations in France sought a unified voice by forming the French Council of the Religion of Muslims (*Conseil français du culte musulman*—CFCM).

In an interview Nicholas Sarkozy, Minister of the Interior, showed the thinking of part of the government on the situation. Portions are worth including here:

One would have to be blind to remain passive. The situation of Islam in France is not good. . . . There are 4 to 5 million Muslims in France. Refusing to look that reality in the face contributes to hiding Islam in cellars and warehouses. We have worried about this clandestine Islam,

29. Robert, sec. xviii, p. 653.

30. Robert, *ibid.*

31. Quoted. in Robert, *ibid.*

32. Robert, *ibid.*

33. *Ibid.*

34. Robert, *ibid.*

for being clandestine contributes to radicalization, whereas public existence contributes to integration and even a form of normalization Republican tolerance is able to give everyone a place. . . . If the CFCM is not created, there is no chance for success; if it is created, it is not a solution to all the problems, but, at least, there will be a means for successful integration of our Muslim compatriots. The creation of CFCM presents two advantages. The first would be to institutionalize the diversity of Islam. The temptation of extremist fundamentalists comes from a vision of a unique Islam, although the reality of Islam is diverse. . . . Diversity is a factor in equilibrium.

He was then asked: “Your involvement in the organization of Islam, is it not contrary to the principle of secularity and to the law of 1905?” Sarkozy responded:

What does this law say? That the Republic guarantees the exercise of religion without privileging any. I put equal energy to permit each of our compatriots to live his faith. Today, Islam is the only religion that does not have a national federated organization. It is at, it is not merely near, the heart of the question of integration and of the national identity of France in 2003.

The interviewer then drew attention to the positions taken by some other government officials and noted that Jean-François Copé, spokesman for the government, has suggested codification of the law of 1905 in order to permit financing with public funds the construction of mosques. Sarkozy answered:

The policy of the government does not include proposing a modification of the law of 1905. . . . I affirm that we clearly can, in the framework of existing legislation, create an institute for the preparation of imams for France just as there exists a school for the preparation of rabbis for France. I do not see that the Republic has to risk continuing to receive imams who speak not a word of French and who defend an Islam incompatible with our values. . . . But the counterpart is my total engagement in favor of a French Islam which must have the same rights as other religions. As to the question of the veil, we will not engage in theological debate. The veil must be rejected if it is an instrument of domination. On the other hand, it is a personal decision belonging to the sphere of private life. As to the question of the school and the veil, it has been settled by the Council of State.³⁵

35. Catherine Coroller and Daniel Licht, “On ne modifiera pas la loi de 1905: Sarkozy revient sur la création d’un Conseil du culte musulman,” *Liberation*, 21 Feb. 2003. Lexis-Nexis, Nov. 6, 2003; June 9, 2004. Sarkozy has since

Earlier, in 1973, the General Assembly formed an institution for the defense of the rights of citizens with respect to government agencies and departments. Originally titled “Mediator,” the title of the office was renamed “Mediator of the Republic” in 1989. The task of the Mediator, who is an independent public figure not subject to recall, is to provide intermediation and conciliation between government agencies and their clients where there is a dispute or complaint. In 1998 Bernard Stasi, the recipient of a variety of honors and the author of three relevant books—*Vie associative et démocratie nouvelle (Association Life and New Democracy, 1978)*, *L’Immigration, une chance pour la France (Immigration, A Chance for France, 1984)*, and *La Politique au cœur (Politics of the Heart, 1993)*—was appointed Mediator. On July 3, 2003, he notified President Jacques Chirac that he had decided to form a commission for “reflection on the application of the principle of secularity in the Republic.”³⁶ The activities of the commission are adequately described within the Report.

Within weeks of the publication of the Stasi Report, the National Assembly adopted a law forbidding wearing religious symbols in schools. The text and a translation of that law appear after this introduction.

In April 2004, Sarkozy was replaced by Dominique de Villepin as Minister of the Interior. On April 22, de Villepin announced that “the country must urgently begin training Muslim Clerics in a moderate Islam that respects human rights and the republican code.”³⁷ Clearly the government of Jacques Chirac takes seriously the recommendation of the Stasi Report.

Although the portion of the Report dealing with wearing the Islamic scarf in schools is a small portion of the total report, it remains clearly the most controversial portion. Support for the recommendation in the Report was provided on June 29, 2004, by the decision of the European Court of Human Rights in the case of *Leyla Sahin v. Turkey*. The case arose from the

become Minister for Finance; as Minister for the Interior he named France’s first Muslim prefect. Sarkozy was also the “first mainstream politician to call for affirmative action to help France’s large and disaffected Muslim population.” Charles Fleming, “France’s Sarkozy Creates Stir,” *The Wall Street Journal*, 10 June 2004, A10, col. 3.

36. “[J]’ai décidé de mettre en place pour mener la réflexion sur l’application du principe de laïcité dans la République.” Bernard Stasi, “Lettre de Mission,” included with Rapport au Président at <lesrapports.ladocumentationfrancaise.fr/BRP/034000725/0000.pdf >.
37. Jon Henley, “France to Train Imams in French Islam,” *The Guardian*, 23 April 2004, p. 17.

objection of Leyla Sahin to a university regulation forbidding wearing the Islamic head scarf. On the analysis of the Court, the question concerned the necessity of interfering with the student's freedom. The following three sections go to the heart of the matter:

104. It must first be observed that the interference was based, in particular, on two principles—secularism and equality—which reinforce and complement each other. . . .

105. In its judgment of 7 March 1989, the Constitutional Court stated that secularism in Turkey was among other things, the guarantor of democratic values, the principle that freedom of religion is inviolable—to the extent that it stems from individual conscience—and the principle that citizens are equal before the law. . . . Secularism also protected the individual from external pressure. It added that restrictions could be placed on freedom to manifest one's religion in order to defend those values and principles.

106. This notion of secularism appears to the Court to be consistent with the values underpinning the Convention and it accepts that upholding that principle may be regarded as necessary for the protection of the democratic system in Turkey.

Two points need to be made. First, regarding each occurrence of the term *secularism* in these sections (and in the rest of the decision), in the French version of this decision the term used is *laïcité*. Second, the argument accepted here is essentially the same as the argument used in the Stasi Report. Moreover, the *Sahin* decision concerns the application of a university regulation; the Stasi Report would give greater freedom in French universities. And courts have uniformly allowed greater restrictions on individual freedoms at lower educational levels. In fine, this decision seems to place beyond challenge the recommendation of the Stasi Report and the law subsequently passed by the National Assembly

CLARIFICATIONS

Alsace-Moselle

Attention must be given to Alsace-Moselle (the current name for the region once called Alsace-Lorraine), the subject of a number of passages in the Stasi Report. France is divided into departments, administratively roughly equivalent to America's states. Alsace is divided into Haut-Rhin and Bas-Rhin, so that Alsace-Moselle actually consists of three departments. The relationship of these three departments to the rest of France in French law recalls the relationship between the Indian nations and the rest of America, although, of course, these three departments also resemble

states and send representatives to the General Assembly. Alsace-Moselle was occupied by Germany from 1871 to 1919, covering the period when the Law Separating Church and State of 1905 was passed.

The result is the separation of church and state which exists in the rest of France does not exist in Alsace-Moselle. The resulting complexities are more than can be explained here; sorting out the problems continues to be a major task of the Council of State, France's high court.³⁸ Four denominations have legal recognition: Roman Catholicism, Lutheranism of the Augsburg Confession, Reformed Protestantism (*i.e.* Calvinism), and Judaism. Ministers of each denomination are paid by the state, but each denomination has a separate rate; they also receive the French equivalent of Social Security. The Council of State has held that these ministers are not public employees, although they are paid by the State. The matter of the appointment of ministers is so complex that I can do no better than translate the explanation provided by Jean Boussinesq:

*The nomination of ministers of religions is done in various ways according to their place in the hierarchy. In conformity with the Concordat of 1801, the Bishops of Strasburg and of Metz are nominated by a decree of the President of the Republic, which precedes their canonical instillation by Rome, which itself precedes the publication of a presidential decree in the Official Journal! The civil authorities of the Directory and the ecclesiastical inspectors of the Lutheran Church are nominated in the same way. Ministers of other churches are nominated by the authorities in their hierarchies, or else their churches. However, the holders of certain positions must be approved by the government: in the Catholic Church, general vicars, chief canons, certain priests in the Catholic Church; in the Protestant denominations, chief pastors, presidents of consistories; in the Jewish religion, the Grand Rabbi, certain members of the consistory.*³⁹

Religion classes are provided in primary and secondary schools, although parents may opt out. The University of Strasburg has two religion departments, one Protestant and one Catholic, with faculty appointed by the national Minister of Education.

Translation: *Mahgreb*

A few translation choices may deserve explanation. *Mahgreb* (see sections 1.2.4 and 3.3.2.1) is almost the same as the English word *Maghrib*;

38. This entire account is based on that by Jean Boussinesq, *La laïcité française*. Paris: Seuil: 1994, pp. 169–75.

39. Boussinesq, p. 173.

each refers to that portion of North Africa including Algeria, Morocco, Tripoli, and Tunisia. It is sometimes called *Barbary*. Although *Maghrib* is the most exact term, it is a term rarely used. Consequently, I have sometimes chosen to translate the term inexactly as *North African*, because that has immediate meaning for Americans and serves to remind the reader of the importance of Algeria to France.

Translation: *Droit* and *Liberté*

A characteristic translation problem is found in the seventh paragraph of 2.2.2: “*Les seules restrictions aux libertés autorisées sont celles qui sont justifiées par la nature de la tâche et proportionnées au but recherché.*” In American jurisprudence, rights or liberties are considered anterior to substantive law; rights, even when not named in the constitution, take precedence over statute law. After a law is passed its constitutionality may be challenged. With that bias I originally translated the passage as “The only authorized restrictions on liberties are those justified by the nature of the task and proportioned to the goal sought.” However, in French jurisprudence, constitutional challenges occur before the passage of a law; a special Constitutional Court evaluates the matter. As a result the protection of rights and liberties is assumed as part of substantive law. Thus, a better translation is the one I have used. (See the section on the court system below.)

Translation: *franciliens* and *française*

Another problem concerns the translation of a sentence in the first paragraph of Part Three: “*Un débat public a été organisé avec 220 élèves de lycées franciliens et française l'étranger qui avaient préalablement travaillé sur la laïcité.*” The term *franciliens* is not found in most of the dictionaries I have consulted. One dictionary offered that it is a term referring to people from the Ile de France, the French department which includes Paris, thus the translation I have used. However, perhaps the distinction is between students from the homeland and students in French schools abroad.

Translation: Slang

The translation of “*few*” (3.3.2.3) is a particular problem. This is an example of *Verlan*, a form of French slang in which the first and last syllables—here the first and last letters—of a word are switched. As far as I know, this is a form of slang which is not used in the United States. The term *Verlan* is itself an example; it comes from *l'enverse*, meaning “reverse.”

The French Court System

Because the Report contains a number of references to cases, some explanation of the French court system may be desirable.

The Constitutional Court is a special court for the review of laws before adoption. Previous presidents of the Republic and members of the National Assembly and the Senate sit on this court.

Otherwise, the courts are divided into (1) the judicial order, which hears matters of private law, and (2) the administrative order, which hears matters of public law, that is, how government law affects other branches of the government, how it affects other countries, and how it affects private citizens. France has, in effect, two supreme courts. Within the judicial order, the highest court is the Court of Appeals (Cour de Cassation). Within the administrative law branch, the highest court is the Council of State (Conseil d'Etat). The trial-level courts are the Administrative Court and the Criminal Court. Decision of these courts may be appealed to the Administrative Appeal Court. The decisions of this court may be appealed to the Council of State, which has both appellate jurisdiction and original jurisdiction to judge the legality of administrative actions. If a party feels there has been a violation of a fundamental right as defined by the European Convention on Human Rights, appeal may be made to the European Commission on Human Rights.

The Council of State performs several functions. It has six sections: 1. The Finance Section, 2. The Interior Section, 3. The Social Section, 4. The Public Works Section, 5. the Litigation Section, and 6. Section for Reports and Studies. The Council of State has the obligation to give advice to the government regarding laws and ordinances. Unlike the U.S. Supreme Court, it can give advisory opinions.

Pim Fortuyn (2.3)

Pim Fortuyn was a Dutch politician who gained sudden popularity with his anti-immigration stance. He was murdered on May 6, 2002, shortly before an election.

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