The Muslim schoolgirl's headscarf in the public space of modern France: A consideration of secularism, gender and post-colonial social structure

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The essay deals with the ‘problem’ of the wearing of headscarves by Muslim schoolgirls in the public space of modern France. In March 2004, France’s national legislature passed a law prohibiting pupils in public schools from wearing symbols or attire which conspicuously express religious affiliation. In this essay, the author regards the three pivotal factors in the creation of this ‘problem’ as secularism, gender and postcolonial social structure. The first section of this essay presents a brief account of the concept of laïcité (laicism/secularism) in France, and this is followed by a discussion of the meaning of wearing the headscarf from the perspective of the categories female/male.

I. Laïcité as the Bedrock of Republican Democracy

The term laïcité first appeared in the nineteenth century (Buisson, 2000). It is formed from the French adjective laïque, itself
deriving from the Greek *laos* meaning ‘the people’. According to Littré’s dictionary, the adjective *laïc* describes “one who is neither a clergyman nor a religious person”. In the latter half of the 19th century the masculine and feminine forms of this adjective took on different meanings. The masculine form *laïc* came to describe one who is not a cleric (*clerc*), a category including acolytes not yet ordained, whereas the feminine form *laïque* came to describe things “falling under the category *laïcité*” (Conseil d’État, 2004). Thus, in *laïc* an opposition is set up between the clergy and the laity, whereas in the feminine form *laïque*, the concept of an institutional reality separate from the Catholic Church inheres in the very definition of the word—and of course the new reality expressed here by the word *laïcité* is precisely the institutional reality of the present Republic. However, the institutional practices of republicanism were not established without conflict, and the social context regarding the implementation of *laïcité* has evolved. First, therefore, we must briefly summarize the historical facts of the matter.

The Great Revolution of 1789 saw the ideals of Enlightenment philosophy realized even if large areas were excluded (Conseil d’État, 2004). The *Declaration of the Rights of Man and of the Citizen*, issued that same year, declares that “No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law,” (Article X). In the field of education, Condorcet regarded public education as a condition for universal emancipation, and considered it the mission of public education to lead people away from the ignorance that resulted in the tyrannical rule by monarchs and religious bodies, and to “spread reason to the people” (Condorcet, 1994). The goal was a parliament made up of people
chosen by the populace, where debate would be conducted on the basis of rational values and true knowledge, and furthermore, the education of citizens who would accept the exclusive sovereignty of this parliament. Of course as is well known, under the banner of these ideals, the Revolution at its height paradoxically gave birth to a number of forms of religious expression. For example, in company with the Goddess of Liberty, the Cult of Reason was celebrated by some revolutionary groups. Even Robespierre, who criticized the atheistic element of such worship, proclaimed the existence of the ‘Supreme Being’, while in the Reign of Terror instigated by Robespierre, the traditional religions of Catholicism, Protestantism and Judaism saw a great number of their clergy executed.

It was in these chaotic times that Napoleon Bonaparte came to power, and agreed a concordat with Pope Pius VII. This contract between Church and State did not, however, restore Catholicism to the status of national religion, only going as far as to acknowledge that Catholicism was “the religion of the majority of French citizens”. The system established by the concordat was intended to stabilize the situation by the reorganization of religion under the strict control of the government, and while the system inherited the idea of religious freedom as a legacy of the revolution, it incorporated Catholicism, Protestantism, Lutheranism, Calvinism and Judaism—the main Churches of the time—into a system of “officially recognized religions”. As Jean Rivero and Hugues Moutouh point out, because the state bore the cost of clerical salaries and other expenses of these officially recognized religions, the system effectively placed these religions in a position of public service (Rivero & Moutouh, 2003). As a result of this partial formalization of religious pluralism, France entered—to borrow Rivero’s expression—the
‘first epoch’ of laicization. It is worth noting that Napoleon maintained the secular nature of the family law through his promulgation of the civil code, and also paved the way for hospitals and schools, two key institutions, to achieve a degree of independence from the Catholic Church (Baubérot, 2000).

The concordat system remained in place until 1905, though not without challenge. The Restoration (1814-30) attempted to reinvest Catholicism with the character of state religion (without, however, abandoning the traditional idea of Gallicanism). In contrast, by proclaiming in the Charter of 1830 that Catholicism was "the religion professed by the majority of the French," the July Monarchy reversed the Restoration’s supportive stance towards ecclesiastical authority. According to the historian Minoru Tanigawa, the Catholic Church, politically sidelined by the liberalist policies of the July Monarchy, viewed these policies as a clear sign of the ‘money-driven self-interest’ of the 'bourgeois' monarchy, and an attitude of mutual suspicion arose between the Catholic Church and governmental authorities (Tanigawa, 1997). Relations between the two parties did improve during the Second Republic and the Second Empire under Napolean III (at least before his position became more liberal in the latter half of his reign). The relationship between the Church and government was also close at the beginning of the Third Republic.

The period from 1880 onward saw a deepening of the conflict—commonly known as the ‘war of two France’—between Catholics and anti-clerical Republicans. After France’s defeat in the Franco-Prussian war, the current of ‘militant anticlericalism’ had been strengthened by the popular myth that “the war was won by Prussian primary school
teachers [i.e. education]”. This militant anticlericalism not only aimed at putting an end to the Catholic Church’s involvement in public life, but also at weakening its influence throughout the whole of society. The main anticlerical policies of this period included abolition of the obligation to refrain from working on the Sabbath (1880), secularization of hospitals and cemeteries, restoration of divorce (1884), the requirement for monastic orders to obtain governmental authorization (or be closed down if they failed to comply) (1880). In this atmosphere of tension a series of education laws were also adopted. Laws relating to female education provided for the establishment of teacher training colleges in each département for educating female primary school teachers (1879), and the establishment of secondary schools for girls (1880). Subsequently the laws of 1881-2 proposed by Jules Ferry, Minister of Public Instruction, established that public primary education should be “mandatory, free of charge and laic”. The 1882 Ferry Law stipulated that “if the parents so wish, a child may receive religious education outside of school”; however, this effectively banished religious instruction from public primary education. Then in 1886, the Goblet law laicized school personell and prohibited regional authorities from financing private schools, ensuring that they would fulfil their obligation to maintain at least one public school. This represented a considerable withdrawal of the control exercised by the Church on public primary education under the Guizot law (1833) and Falloux law (1850). It should, however, be remembered that this laicization of schools took place within the existing system of officially recognized religions (Baubérot, 2000).

The final break with the concordat system and entry into the ‘second epoch’ (Rivero) of French laïcité came with the so-called 1905 law.
This law aimed to reconcile the ‘two France’ by guaranteeing freedom of religious worship and giving consideration to the practical realities of laicization. The solution was to institutionalize the separation of Church and State. Article II of the law states that the Republic “neither recognizes, nor salaries, nor subsidizes any religion.” This announced the end of the system of official recognition for religions, and the Church now became subject to private law (the 1905 law did, however, leave open a route for payment of expenses relating to chaplains and maintenance and repair of church buildings). The logic of laïcité would gradually take hold as France moved through the twentieth century, notwithstanding a brief period during WWII when the Nazi puppet regime installed at Vichy altered the spirit of the 1905 law by allowing religious education during school hours and financing Catholic schools. The two constitutions adopted after WWII finally brought an end to the ‘two France’ conflict by enshrining the concept of laïcité as the foundation of the Republic. The constitutions of the Fourth and Fifth Republics assert that «France shall be an indivisible, secular, democratic and social Republic». From here on laïcité became an principle of French republicanism.

We shall now focus on two points which emerge from this brief history of laïcité’s establishment.

(1) The concept of laïcité has gained broad consensus in contemporary French society. If laïcité has gained consensus, it is because it has developed through the history of French republicanism to become established in a single legal framework. This does not necessarily mean that the term ‘laïcité’ has escaped ambiguity in its usage. On the contrary, it could even be said that this consensus originates in the power of the concept laïcité to embrace mutually contradictory needs.
Emile Poulat, a scholar of *laïcité*, claims that French-style *laïcité* has two sides, “like the two faces of the Roman god Janus” (Poulat, 2004). We will briefly consider what those two sides are. On one side, *laïcité* bears the face of Gallicanism—the principle of independence of the French Church. When comparing French *laïcité* with systems of church-state separation adopted by other countries it is difficult to deny the anti-ecclesiastical aspect of France’s ‘nationalization’ of the Catholic Church (at least while the French conception of *laïcité* remained in the ‘first epoch’). In addition, the fact that the secular authorities in post-revolutionary France always encountered conflict with the Vatican whenever issuing important policy relating to *laïcité* indicates that the point at issue was nothing other than the exercise of national sovereignty (these conflicts belong to the history of diplomacy)\textsuperscript{iv}. In its other aspect, it could also be said that for a long time, the establishment of *laïcité* was synonymous with the advance of the practice of republican democracy. This extends from the removal of the Catholic Church’s influence on society, through political liberalism loaded with the concept of separation of Church and State, and reaches as far as the scientific secularization of the contents of school textbooks. The 1905 law, in providing a framework for religious pluralism without institutionalizing the officially recognized religions, made a break with the principle of royal power as part of France’s political tradition. Of course when one hears the words of people almost fundamentalist in their support of modern *laïcité* it is hard to escape the impression that some ambivalence towards this break with the past still remains.\textsuperscript{v}

(2) The presence of the Islamic headscarf in the public space of modern France presents a challenge to the broad ‘republican’ consensus over *laïcité*, and as such casts light on what, in the historical structures
that created this consensus, has remained ‘still unconsidered’. As the foregoing examination of the subject shows, the notion of laïcité has been a key element in the democratic legitimacy of the French Republic. However, because of this foundational role, it is essential not to lose sight of the *formal* nature of the principle of separation of Church and State. That is to say, this principle has legitimacy because it has been formally established. The public space where citizens encounter one another is constituted on the precondition that each individual’s religious beliefs remain private (this should also be the precondition for universal realization of laïcité as a legal principle at least in the national space (cf. Althusser, 2005)). However in the reality of history, such a republican ideal has only ever been realized in forms which also entail large areas of exclusion. In its report “Islam in the Republic”, the High Council on Integration, set up by the French government in 2002, notes three main areas where laïcité is enforced inconsistently (Haut Conseil à l’Intégration, 2000). These are (a) ownership and administration of property (religious facilities)\(^vi\), (b) exclusion of a number of French regions from laïcité’s scope of application\(^vii\), and (c) the fact that the 1905 law was not implemented in former départements in Algeria. In considering these areas of exclusion, we intend to focus here on the dimension of post-colonialism, which is illuminated in particular by these last two areas. For it is precisely this dimension which can indicate those things «as yet unthought» in the historical process of laicization. Our task is thus to analyze the “dissonance in laïcité” (Balibar, 2004) struck by the appearance of the Muslim schoolgirl’s headscarf in the public space of modern France.
II. Questions surrounding the connections between gender and postcolonial aspects of the headscarf problem.

In this section we focus on two series of questions. Firstly, what does the ‘headscarf’ signify? In particular we examine the opinions on the headscarf problem held by feminists in mutually opposing camps. On one side are feminists such as Elisabeth Badinter who see the root of this problem as lying with the hijab as a means of propagating the marginalization of women, and who criticize the liberals’ call for ‘open laïcité’ and tolerance towards the wearing of the hijab in public schools—what they see as the ‘Munich of Republican schools’, a reference to the Munich agreement and the ill-advised appeasing stance of the liberal camp towards the spread of fascism (Badinter, 1986). On the other side are the feminists who differ from the other camp in acknowledging the unfairness inherent in stigmatizing a particular group. The constant reporting of the headscarf ‘problem’ in the media has in fact resulted in more stigmatization of Muslim girls than youths in general (the report by the High Council on Integration points out that the growth of a beard—or at least the beginnings of one—by adolescent Muslim boys who wish to be recognized as Muslims has presented virtually no problems in the running of schools (Haut Conseil à l'Intégration, 2000)). The second series of questions centers around the meaning of ‘dysfunction of schools’. In the discourse of republican ideals, public education was applauded as a way of elevating the working class, and in schools the ideal of egalitarianism and appeals for laïcité became intertwined. In reality, however, over 30 years ago a group of sociologists began analyzing how inequalities are structurally reproduced in France’s education system (Bourdieu & Passeron, 1991). It seems that the ‘dysfunction’ in France’s public schools
did not arise piecemeal and through chance but is in fact a phenomena determined by the history of class and postcolonial immigration in France. The law passed on March 15, 2004 reflected the dilemma directly facing the Republican school against this historical background. The dilemma is that while the school built on republican principles is charged with the mission of bringing equality to all members of society through the light of knowledge, since the principle of laïcité has come to be considered as the precondition for fulfilling this mission, any pupil who violates this principle, even if they are from a disadvantaged social class, must be subject to series of sanctions that culminate in expulsion from the educational system. One of the decisive factors in the adoption of the 2004 law was the call primarily from schools for nationally unified standards in place of the previous policy of leaving the discipline of pupils to the discretion of each school, and this indicates that even in the schools themselves there was an awareness of the dilemma.

a. The meaning of the ‘headscarf’: questions of gender

From the moment the pupil exits the public school gates, the wearing of religious symbols ceases to be a violation of the law—in a nation based on laïcité this legal reality does nothing to explain why the debate in France tends to include the wearing of headscarves outside school. In attempting to understand this tendency, it is appropriate to study the problem from the perspective of gender (Rochefort, 2005), and in this regard the feminist arguments are of great interest, for the feminist debate forces us to consider the social function of clothing, of the headscarf itself. In fact one of the points which divides feminists is whether the headscarf is a means of oppression or emancipation. Feminists on both sides seem to argue this point from the standpoint of
two sets of historical circumstances. On the one hand, if modern feminism was established by liberating women from the Judao-Christian yoke, this inevitably gives the headscarf a prepackaged negative meaning. As Françoise Gaspard and Farhad Khosrokhavar point out, “even in France, until only recently the Catholic Church compelled women to cover their hair and legs when going out into the town, under the gaze of men outside the family, while even now the wife of an Orthodox Jew must shave her head and wear a wig” (Gaspard & Khosrokhavar, 1995). These facts would appear to lead to two conclusions. Firstly, the headscarf is imbued with values which the majority in France today find indefensible: the wearing of a headscarf by a secular woman for religious reasons is seen as nothing but the legacy of an oppressive past. The second conclusion is that for the non-Muslim majority, the traditional image of the Judaeo-Christian headscarf has come to be projected onto the Muslim woman’s hijab. This is quite frankly a form of orientalism; however, such projection goes further than the cultural level, its traces can even be seen in the government’s policies on religious administration. For example, in response to the problems in the metropolitan suburbs, the French Government attempted to engage in dialogue by giving representation to moderate muslims through organization from the top down, but it has often been pointed out that in doing this, the image of the old relationship between the Catholic hierarchy and the secular authorities is being projected onto the idea of giving representation to ‘Islam in France’ as the partner in dialogue (the clerical hierarchy as in Catholicism does not traditionally exist in Islam). On the other hand, in media discourse, presentation of the headscarf issue emphasizes images taken from Islamic fundamentalism or the latest geopolitical conflicts in
the Muslim world, as well as images from the perspective of ‘modern’ feminism in the sense outlined above. On this point, Florence Rochefort describes this sort of amplified signification through her analysis of the media’s handling of the first headscarf incident in autumn 1989. Rochefort writes, «The disturbance caused by this controversy […] was stirred up even more by the treatment of the incident on the screen. The war of diction—the ‘chador of discord’ was opposed by the moderate expressions ‘veil’, ‘hijab’, the more reserved ‘headscarf’ and the irony-laden ‘fabric’ [tissu]—went together with the war of images. As well as the photographs of the young girls themselves, the image used almost systematically to depict this incident was the photograph of women walking at the front of a demonstration by fundamentalists on October 22nd, like a vengeful mass dressed in long headscarves and chadors. […] the young women dressed in headscarves were seen at that time as a pure embodiment of the threat of Islamists of the Iranian revolution and Arab/Muslim countries.» (Rochefort, 2002). The view of the female body oppressed by Judaeo-Christian rules, as described above, was now supplemented with the image of aggressive Islamism embodied in these chador-clad women, and this overlaying of negative images strengthened the argument against wearing headscarves. However, the battle of words and images has provided scope for reflection and debate over the significations generated by the media with regard to the headscarf issue (with essentialist arguments over the function of the headscarf taking on a relativist tone among the media and academics) and also for political intervention.

b. The meaning of ‘dysfunction’ of the public : questions surrounding postcolonial social structure
We stated earlier that dysfunction in public schools has been the subject of sociological research for over thirty years. This dysfunction is thus not an isolated phenomena but is located in the context of dysfunction in social cohesion at a more global level. The wearing of headscarves also occupies an ambiguous position in this context. Certainly it is often interpreted as a sign of socio-economic problems being expressed in an ethno-religious form, and such an interpretation has led to anxiety in France concerning the closed nature of ethno-religious communities. The lack of knowledge on the part of the majority and the projection of cultural traditions close to the self have resulted in a sense of crisis throughout French society. Yet regardless of all these negative characterizations surrounding the wearing of the headscarf, it remains a fact that a minority of Muslim schoolgirls seek the right to wear the headscarf. Their arguments cannot be comprehensively examined here, but there are two points in particular the author wishes to make. Firstly, in order to avoid confusion, it is necessary to consider the unique situation of each country with regard to this problem. The wearing of headscarves by Muslim females in France bears the distinctive features of being a marked practice as a result of the laicization of public space, and of having been practiced in former French colonies. However, these distinctive features by no means make France a unique case. Having noted these features it is instructive to make a comparison with a country such as Turkey. The regime established by Mustafa Kemal Atatürk in 1923 was authoritarian and promoted modernization, but was also characterized by policies that promoted secularism: policies including prohibition of wearing headscarves in the public sphere (1924), mixed-sex education (1924), abolition of sharia law (1926), and the introduction
of women’s right to vote and stand for office (1934). A point forcefully made by the sociologist Nilufer Göle is that under Turkey’s republican, secular system there are in fact still “educated [women] from the lower and middle classes” calling for the right to wear the headscarf. Göle states that, “paradoxically, these headscarf-wearing female students, who owe their social position and newly acquired social recognition to having had access to secular education, are further empowering themselves by gaining knowledge of Islam and seeking political rights” (Göle, 2000). In Turkey’s case this demand for rights exists against a background of authoritarian rule by military authorities, a new move towards democratization through economic development, and the birth of a moderate Islamist administration. While being careful not to confuse the different situations of these two countries, we would suggest that in both countries—countries whose national legitimacy derives from their secular and modernizing character—wearing the headscarf can take on an ‘oppositional’ value that criticises the present dysfunctional status quo.

This takes us to the second point, namely that it is necessary to unpick the various functions of the headscarf. The hijab, which conceals part of the individual’s body, simultaneously invokes assumptions about the individual’s social status (Muslim, female, Arab, etc.). Feminists in opposing camps are equally cautious when it comes to the symbolic aspects of the headscarf’s visibility. For example, Iranian-born Chahdorrt Djavann, a writer critical of Islam’s oppressive character, also criticizes headscarf-wearing women—what she calls ‘seamstress’—on grounds of the paradoxical inversion of the headscarf’s visual function. Djavann writes, “the wearing of the headscarf in France is not a means for melting anonymously into the multitude, but rather for drawing the
gaze; it is a means for attracting attention to the self, and is thus a form of exhibitionism or provocation. The female transforms herself into an objet, and thereby shows herself off; more precisely, she is the women as sexual object” (Djavann, 2003). The problem of the headscarf’s visibility thus intersects with the problem of the objectification of the body. Yet this sort of language also invites the counter-question who (or more precisely what type of woman – whether they wear the headscarf or not – and what type of man) can possibly escape the logic of this form of objectification of the body (and moreover the logic of commodification) in the capitalist society we inhabit. Perhaps this is the site where the issue of gender raised earlier merges with the issue of postcolonial social structure. One may simply use the word inequality, but there are in fact inequalities of varying character. The testimony quoted below represents a position diametrically opposed to that of Djavann. In an interview by a female journalist from the French newspaper L’Humanité with Nouria, a former pupil of Faidherbe High School, Lille, who was suspended in 1994 for wearing a headscarf, Nouria gives her views on the disadvantaged situation Muslim schoolgirls who wear headscarves are placed in. “Some people may think it’s wearing a headscarf that ‘inferiorizes’ us, but that’s not the only thing” (Gathié, 1999). While this answer might seem perverse, it also shows that the calculation is not simple - it involves a careful weighing up of a two-fold inequality (the inequality between male and female, and between the ‘immigrant’ population and the ‘original French’ population) and the advantages brought about by taking a position with regard to identity (what is seen as necessary to oneself in the midst of this two-fold inequality). On this point, Christine Delphy writes that the Muslim’s headscarf has problematized “what passes as sexual liberation
for us”. According to Delphy, some among the Muslim women who wish to wear the headscarf are in fact seeking refuge from the present manifestation of patriarchal authority which gives the illusion of equality. Delphy goes on to argue that there is a mirror-image symmetry between the religious fundamentalism which has oppressed women by forcing them to cover their bodies, and secularized capitalism that exploits women by undressing the body. Delphy writes, “every women is duty bound to an existence which ‘arouses desire’ at each moment. Women who wear the headscarf violate this injunction. As Samira Bellil pointed out several months before her death\textsuperscript{xiii}, the obsession of people who wish to cover us with the headscarf finds its equivalent only in the obsession of those other people who wish to undress us. Interestingly, these two obsessions are two forms [depicting a symmetry] of the denial of the female as if reflected in a mirror. On one side, the arousal of desire by the female is always desired, while on the other side it is forbidden. However, in both cases, the reference point that must be considered relative to the woman’s own body is male desire. What the headscarf makes clear is that the woman’s body is not the body of oneself but is in fact the [objectified] body for oneself” (Delphy, 2005). It is presumably possible to doubt this symmetry between religious fundamentalism and modern capitalism. However, if Delphy asserts the existence of this symmetry, it is because she has seen that this symmetry has conditioned a new form of female solidarity in spite of the postcolonial dividing line separating off women belonging to different social categories.
Conclusion: views of the ‘headscarf issue’ from abroad

For an academic scholar observing a society from abroad, there are at least two potential traps. The first trap is one peculiar to Area Studies, namely that being in the position of a foreign observer, the scholar is prone to assimilate the history of the whole country as a single narrative viewed from her own perspective. In the first half of this essay for example, an particular interest in the story of the development of laïcité in France has perhaps led us to underestimate determining factors other than the conflict between the Republic and the Catholic Church. This attitude carries the risk of ‘fundamentalist laïcité’, of blindly enforcing the ideals of laïcité in a multicultural society like France today (it is to say that this risk is not limited to foreign scholars (Bancel, Blanchard & Vergès, 2003; Weil & Dufois, 2005)). The other trap is peculiar to the Cultural Studies scholar. For scholars trained in the methodologies of cultural studies—not uncommon in universities in the English-speaking world—it is, if anything, easy to recognize, within the discourse of fundamentalist laïcité used by some French, a form of historical denial in the post-colonial period. And it is only a small step from here to the weaving of narratives concerning the latent political and cultural power of the diaspora brought about by colonialization. However, schematic diagrams from the cultural studies handbook, unless they take into account the peculiarities of the French context (the historical development of laïcité in the public sphere, etc.), will impose some simplistic explanation on the issue. The concerns of this essay were regulated by an awareness of the dangers of these two traps. If the author has attempted to present the ‘headscarf problem’ in all its multi-layered plurality, it was with the certain intention of avoiding a reduction
of the issue to a single dimension. The hijab as an object and garment both personal and political is fascinating because it brings into focus the different structural and historical trends (or perhaps the many primary and secondary ‘contradictions’ developing in disequilibrium) in the transnational transformation of today’s societies.


BASTID, Paul Bastid: *Cours de droit constitutionnel (doctorat)*, 1960-61.


DELPHY, Christine. « Race, caste et genre en France », in Jacques Bidet (sous la dir.), *Guerre impériale, Guerre sociale. Actes du Congrès Marx International IV*, coll. « Actuel Marx Confrontation », PUF, 2005 [Because a print version of this essay
was unobtainable, we had to consult a ‘draft’ version available on the internet. cf. http://lmsi.net/article.php3?id_article=368].


HAUT CONSEIL À L’INTÉGRATION: L’Islam dans la République, La Documentation française, novembre 2000.


TANIGAWA, Minoru: Jujika to sanshokuki: mo hitotsu no kindai furansu [The Cross and the Tricolor: Another Modern France], Yamakawa Shuppansha, Tokyo, 1997.

WEIL, Patrick & DUFOIS, Stéphane (sous la dir.): L’Esclavage, la colonisation et après.... France, États-Unis, Grande-Bretagne, PUF, 2005.
Note

i Other religions were merely granted legal status and tolerated.

ii Gallicanism can be defined as ‘the principle of independence of the Church of France’, and is often understood as the ideal that the right of investiture should rest with the monarch. The Conseil d’État report refers to ‘administrative Gallicanism’ in the restored monarchy.

iii This holds true despite the ongoing dispute between religious groups and supporters of laïcité over the subject of whether private schools should be publicly funded.

iv On this point there are two important cases worth pointing out. (a) On enactment of the Civil Constitution of the Clergy (1790), Pope Pius VII would only recognize those ‘refractory priests’ who remained loyal to Rome and refused to swear allegiance to the nation. (b) After the ballot on the 1905 law, Pope Pius X criticized the unilateral nature of France’s decision, which broke the international treaty that was the concordat (Bastid, 1960-61).

v “To make assertions about principles applied to contexts differing from the particular situation in which a law was enacted is to raise these principles from the particular to the general, from fact to ideal. With regard to laïcité, one of the most frequent, most subtle and yet most forceful attacks is the attack which denies the values held by laïcité in the form of these principles, and which attempts to tie laïcité to the particular set of circumstances at the time the [1905] law was drafted. When such historicism comes from the mouths of certain religious thinkers [possibly referring to scholars of laïcité such as Baubérot and Poulat - Onaka] people must surely be surprised. For, as religious thinkers surely they would not apply such relativization to Jesus’ injunction to love (Sermon on the Mount). Incidentally, if the value in this injunction to love does not derive only from the particular historical situation in which it was born, but can be seen as deriving from the meaning inherent in the injunction, then irrespective of what choices should be made in relation to faith, the same acceptance should also be given to the principle that unites consideration for ones inner freedom with consideration for the equality of all people. In fact, this is exactly the meaning
of separation through *laïcité*, and many thinkers from various periods and considerably different standpoints, including those with a religious perspective in the true meaning of the word, have indicated the necessity of this separation. 

*This law is not an agreement* [that regards State and Church as equal parties - Onaka], *it is a unilateral act of liberation based on the sovereignty of the people, and by this law the sovereignty of the people acknowledges the justness of that agreement in its claim to universality.* (Pena-Ruiz, 2004, pp.35-36; quoter’s emphasis). One wonders if this mode of thought, which unhesitatingly establishes a symmetry between the Christian injunction to love and a Republican legal principle, is really worthy of being called 'secular thought'.

vi The report distinguishes three types of regime in force. (1) Protestant and Jewish Churches. These Churches are the owners of their own religious facilities, and must pay for the upkeep of these facilities, but are exempt from fixed asset tax. (2) Catholic Church. Has right of use of its own religious buildings, but their upkeep must be funded by public bodies. (3) Pastors and followers of new religions. All property is built and managed in accordance with private law and at the expense of those individuals. Islam comes under category (3), despite receiving a subsidy of 500 000 francs when the Great Mosque of Paris was built. The report also urges caution over “the quantitative and qualitative poverty of mosques and places of prayer” (p.37).

vii With regard to the application of the 1905 law, aside from several overseas *départements* such as French Guiana being excluded from the law’s coverage, *départements* in the Alsace-Moselle region have remained under the concordat system (combined with German law with regard to association) even after being restored to France after WWI.

viii According to Hanifa Chérifi, Inspector General of the Education Ministry, in the academic year 2004-5, 44 pupils were expelled form wearing the Muslim headscarf, while 3 were expelled for wearing the Sikh turban (Chérifi, 2005).

ix Our usage here of the term ‘Judaeo-Christian’ owes something to Azria, 2002, though it is used in a free form.

x The policies of President Sarkozy towards Islam do seem to be heading in this direction, the direction of publicly ‘recognizing’ the Islamic ‘community’ centering
on its peaceful elements, and then incorporating that community into the system. The task, the urgent task for the future, is to discuss, in relation to (post)colonialism, the comparison between the system of *laïcité* based on the 1905 law (which did not apply to Islam in the colonies) and the earlier system of public recognition of religions (and today's favored topics of multiculturalism and religious pluralism).

xi  The first headscarf incident in this controversy was the expulsion of three Muslim schoolgirls from Gabriel Havez School, Creil, Oise.

xii  See Amselle, 2001, on the lack of application of *laïcité* in Algeria under French colonial rule, and on the colonialist nature of multiculturalism.