

Laïcité as control

The French reforms of 2021 in historical perspective

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Abstract

This article argues that the 2021 legal reforms on *laïcité* in France signify a new development in the legal concept of *laïcité*. The new provisions move away from an emphasis on *laïcité* as an organisational principle of the state, the separation between church and state, and neutrality. Instead, the 2021 law pre-emptively casts suspicion on religious minorities as potential threats to public order, Frenchness and the principles of the Republic, and it attaches to this suspicion an assertion of control backed by the force of administrative and criminal law. This control is reminiscent of the Napoleonic motives for interfering with the Catholic Church as well as with Protestant and Jewish minorities.

Keywords *laïcité*, public order, religious associations, religious minorities.

1. Introduction

This article discusses the character of the legal concept of *laïcité* as expressed in the 2021 Law Concerning The Respect For the Principles of the Republic.² This law represents a comprehensive legal reform of the relationship between the state, religious institutions, individuals and public services. Although the text of the law avoids any specific references to Islam or France's Muslim minorities, references to radicalisation and respect for the principles of the Republic hardly conceal the political suspicion of Muslim minorities. The timing of the legislative proposal – shortly after the murder of teacher Samuel Paty – amplifies this generalised unease about radicalisation and pre-emptively projects it onto all religious institutions. The 2021 law provides a legal basis for structural state interference with the administrative operation of religious institutions, especially in the realm of foreign funding and oversight, and attaches to these restrictions relatively hefty administrative fines.

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² Loi no. 2021-1109 du 24 août 2021 confortant le respect des principes de la République (1). Available at: <https://bit.ly/3EOu8q8>.

With ample references to *laïcité*, the law combines respect for the principles of the Republic with the prevention and detection of radicalisation, oversight over foreign funding, and pre-emptive references to of the legal concept of public order.

I contend that the 2021 law represents a new development in the legal conceptualisation of *laïcité*. It is not merely an expression of strict secularism, of which France is often taken as a model. Neither does the new law simply reinforce the legal independence of religious and state institutions from each other as stated in the 1905 Separation Act. Rather, the 2021 law moves away from articulating *laïcité* as an organisational principle of the state, with primary reference to state neutrality and the institutional separation of churches and the state. Instead, it pre-emptively casts suspicion on religious minorities as potential threats to public order, Frenchness and the principles of the Republic, and it attaches to this suspicion an assertion of control backed by the force of administrative and criminal law. In this assertion of control, the 2021 law is reminiscent of the rationale of the oversight imposed by Napoleon Bonaparte on Catholic, Protestant and Jewish communities – a structure which remained in place for all of the nineteenth century and from which religious minorities were emancipated by means of the 1905 Separation Act. From this perspective, the development of *laïcité* in the 2021 law embodies an historical regression in the protection of religious minorities. I will attempt to make this regression apparent by reviewing the texts of the Napoleonic arrangements, the 1905 Separation Act and the 2021 law concerning the respect for the principles of the Republic.

2. A backstory to *laïcité*: Napoleonic arrangements with Catholic, Protestant and Jewish communities

The concept of *laïcité* dates back to the Act of 1905 concerning the separation of churches and the state, as well as subsequent laws.³ Following a century of animosity and rapid regime changes, the 1905 Separation Act emerged as a new legal framework of coexistence, taking stock of “Frenchification” policies of the Third Republic (1870-1940). Contrary to what is often believed about French secularism, no clear constitutional or even legal concept of secularism emerged in the administrative frameworks that governed religious diversity in France for most of the nineteenth century. Secularism certainly was an important aspect of the revolutionary ideals of some, and in its extreme form during the brief Jacobine regime, secularism may have become associated with anti-clerical sentiment (Sperber 2017:92).

³ Loi du 9 Décembre 1905 relative à la séparation de l'Églises et de l'État. Available at: <https://bit.ly/3EHIT2T>.

However, the legal frameworks that governed religious diversity were not necessarily anti-religious (Cohen-Almagor 2021:249).

The core of the laws and regulations concerning religious communities was imposed under Napoleon. These included the 1801 Concordat between Napoleon and Pope Pius VII, the Catholic Organic Laws and the *Articles organiques* concerning the Reformed and Lutheran churches, as affirmed in the *Loi relative à l'organisation des cultes* of 1802,⁴ and lastly, the Imperial Decrees regarding the Jews of 1808.⁵ The Napoleonic arrangements were not necessarily examples of religious liberty. They were significantly restrictive compared to some of the ideals initially expressed in the French Constitution of 1793 and in the Declaration of the Rights of Man and of the Citizen, such as the freedom of conscience and the free exercise of religion. Napoleon's strategy was to impose arrangements of control over religious communities whose identity did not coincide with that of the political community, chiefly in the name of common Frenchness as well as of public order (van der Tol 2020).

The concern over Frenchness and of public order included the priority of French citizenship over membership of particular (ethno-)religious communities, the limitation of foreign influence on religious communities, policies of political and administrative centralisation, and an interest in cultural convergence (Sagan 2001:302). Frenchness would not preclude religiosity, but neither was it grounded in the then-dominant Catholic faith. One way in which this concern for Frenchness found expression was the limitation of the number of Catholic holidays, accompanied by a requirement that certain holidays be celebrated on Sundays rather than on weekdays, although these rules and their application were somewhat relaxed after the fall of Napoleon (Shusterman 2007). Even so, this reorganisation of the relationship between Catholic liturgy and the use of public space replaced the early modern interdependence of these two components. Instead, uses of public space expressed the precedence of Frenchness over religion, which was recognized primarily as a source of personal morality, even if it remained relevant for a large part of the population.

The Concordat between Napoleon and Pope Pius VII recognised the importance of the Catholic tradition, yet it maintained a careful balance between those who remained loyal to the Pope and those who espoused a strong anti-clericalism (Hosack 2010:31). The acknowledgement of the importance of the Catholic faith in the preamble suggests that in striving for political stability, Napoleon could not afford

⁴ Loi du 8 Avril 1802 relative à l'organisation des cultes, with subsections on Catholic and Protestant organic laws. Available at: <http://www.legifrel.cnr.fr/spip.php?article527&lang=fr>.

⁵ The most important of the four imperial decrees is the "Décret impérial n° 3 237 du 17 mars 1808, qui prescrit des mesures pour l'exécution du Règlement du 10 décembre 1806 concernant les Juifs." Available at: <https://bit.ly/3lAxRTN>.

to sidestep the Catholic Church. The Concordat relied on language associated with the regulation of religious minorities under the *ancien régime*; for example, Article 1 stated that worship was free, but that all rights and privileges were conditional upon public order and peace. This particular reference to public order and peace derived from early modern practices of toleration, which designated religious minorities as safety threats (van der Tol 2020). The state monitored the church hierarchy and maintained oversight over instructional materials in exchange for paying the wages of bishops and priests (Article 14 of the Concordat, Articles 64-74 of the Catholic Organic Laws). The state nominated all bishops and granted final approval of lower appointments, and all clergy were expected to take an oath of loyalty to the state (Concordat: Articles 2, 5, 6 and 10). The state prescribed one liturgy and one catechism for all Catholic churches in an attempt to cause liturgical practices and culture to converge around the notion of Frenchness (Catholic Organic Laws: Article 39). New liturgical or educational material required governmental approval, and priests were expected to study in France, not outside the country (Catholic Organic Laws: Articles 39, 40, 50 and 63).

Napoleon took a similar approach in the *Articles organiques* of 1801, which he imposed on the Reformed and Lutheran churches. Interestingly, he referred to the Lutheran churches as churches of the Augsburg Confession, using a phrase that had been written into the legal texts of the Westphalian Peace Treaties of 1648. Articles 1 and 2 required the churches to organise themselves on the basis of France's territory and formally prohibited foreign influence over their institutions. For example, churches were not allowed to maintain relationships with foreign authorities, foreign pastors should not exercise liturgical functions, and pastors should have studied in either France or Geneva (Articles 12-13). All confessional and educational documents required governmental authorisation (Article 4). These provisions imposed significant limitations on Protestant churches, which had always had a transnational character. Lutheran churches would be inspected annually, reflecting Napoleon's strong geopolitical interest in the Alsace and its relation to the German lands (Article 35 ff.).

In 1808, Napoleon issued three decrees concerning Jewish communities, following a consultation with the Assembly of Jewish Notables and the Great Sanhedrin, an important representative body of Jewish minority groups. This included Decree no. 3 237, which detailed the obligation to organise Jewish life around recognised synagogues and rabbinical leadership (Article 1-6), as well as the imperative to follow the interpretations of the Great Sanhedrin (Article 12).⁶ Decree no. 3 589 ordered Jews without fixed family names and surnames to register their formal

⁶ "Décret impérial n° 3 237 du 17 mars 1808."

names (Article 1). These names could not refer to the Old Testament or indeed to names of biblical towns other than those approved by the State (Article 3).⁷ The measures exhibited a tension between the conferral of citizenship on Jewish minorities, on one hand, and the significant social and economic restrictions imposed through Decree no. 3 210 on the other hand (Sepinwall 2007).⁸ Jewish elites were still permitted to oversee religious education, poverty relief and religious discipline, but otherwise Napoleon expected Jewish communities to assimilate also, denouncing them as “a nation within a nation” (Schreier 2007:78, 81; Frankel 1992:11). However, this assimilation also implied what Sepinwall (2007:57) calls “regeneration.” This concept referred to the racialisation of Jewishness as inferior and thus in need of improvement before assimilation would be possible. This idea coheres with contemporaneous philosophical and theological racialisations of Jewishness as described by J. K. Carter (2008). The explicit interference with Jewish culture, the regulation of marriage and family life, and allegations of economic immorality reflect this requirement of regeneration (Schreier 2007:80-82, 102-103).

The political balance that Napoleon sought to strike bears the semblance of historical toleration, but also of control as well as unease about the political significance of foreign religious authorities. As such, the regulations nuance the picture of a modern state turning away from practices of toleration in the name of enlightened governance. However, Napoleon also reconstructed the role of religion such that minorities could hold citizenship – conditional on their compliance with the law. This was certainly a step towards the inclusion of religious minorities in the French nation, but narratives of secularisation can obscure the tension between citizenship and toleration that existed in the Napoleonic arrangements. Insofar as secularisation is understood as transferring ecclesial responsibilities to the state (Shakman Hurd 2004:238), one could argue that Napoleon’s policies indeed expressed a measure of secularity. Yet insofar as Frenchness ceased to depend on Catholic identity, one might argue that policies of Frenchification implied that secularisation was of secondary importance to Napoleon’s realist orientation and his overriding concern for stability, unity, and political centralisation (Rayapen and Anderson 1991).

3. Laïcité as turning away from toleration

The Third Republic inherited this deep tension between citizenship and echoes of toleration. The tension was perhaps inadvertently articulated by the Ministry of Interior Affairs in 1880, when it argued that the Concordat of 1801 was an instance

⁷ “Décret impérial n° 3 589 du 20 juillet 1808.”

⁸ “Décret impérial n° 3 210 du 17 mars 1808.”

of “toleration” and that there was no warrant for the monetary “privileges” of the Catholic Church. Moreover, whereas the Concordat entertained the possibility of a dynamic public space that could serve as a “temporary space of worship,” the Ministry clarified that the term “public” referred to public accessibility (d’Hollander 2004:186). More than a mere observation, this statement was part of a wider controversy about the role of the church in society, particularly with reference to the reassertion of public significance on behalf of the church and the role of the church in education (Kaiser 2003:75; Cohen-Almagor 2021; Chaitin 2009). It was in this context that “democratic values” were first invoked as a source of political morality over against those of the church (McMillan 2003:87-88). Similar controversies occurred in several emerging nation-states (Harrigan 2001) as political elites began to emphasise the importance of the political participation and autonomy of individual citizens, as well as the moral autonomy of the nation relative to religious authorities (Jansen 2006:476-477; Lehning 2001).

This controversy provided the context for the neologism of *laïcité*, which first appeared in Ferdinand Buisson’s *Dictionnaire de Pédagogie et d’Instruction Primaire* (1887) and which concept came to signify the nation’s autonomy vis-à-vis the Catholic Church (Daly 2012:583-584). The capstone of this development was the Separation Act of 1905, which legally underpinned the unfolding process of disestablishment. Although disestablishment is of course related to processes of cultural secularisation and anti-clerical sentiment, the language used in the original Separation Act referenced neither *laïcité* nor secularism. And whereas the act itself reorganised the relationship between the state and churches as institutions, the first article spoke only of the freedom of conscience and the free exercise of religion: “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 1). Restriction of freedom of conscience would be justified only on the basis of preserving public order – not on principles of secularism, *laïcité* or the like. The article is followed by a stipulation regarding the non-recognition of any religion “La République ne reconnaît, ne salarie ni ne subventionne aucun culte” (Article 2).

This particular order suggests that the separation of churches and the state served individual freedom, albeit with particular reference to public space, as other parts of the Separation Act indicate. This concern over individual freedom and the separation of churches from the state does not signify a secularisation of the nation per se, but does seek the secularisation of the state and a definite turn away from the logic of toleration. This reading helps to explain the relatively broad support for the Separation Act, including from a range of religious minorities. The legislative process leading to the Separation Act evolved under the leadership of a broad

parliamentary committee whose chair, the Protestant liberal, and later Nobel Peace Prize laureate, Ferdinand Buisson, was committed to laicisation as a mechanism for peace and solidarity between religions in the national context (Hayat 2005). Other notable committee members were the radical liberal George Clemenceau, anti-clerical and pro-laïcité; the socialist Jean Jaurès, who had publicly supported Alfred Dreyfus and who campaigned for neutrality and equal rights for all citizens; Francis de Pressensé, a pastor's son and president of the *Ligue des droits de l'homme* (an association promoting human rights); and Aristide Briand, a tolerant atheist who believed that laicisation would end the suppression of churches (Baubérot 2014:194).

4. Laïcité as secularism?

Although the 1905 Separation Act itself did not explicitly mention *laïcité*, its enactment certainly was a part of the legal process of laicisation in the Third Republic. Until 1958, any references to laïcité in constitutional documents were limited to the realm of education, such as in the Preamble to the Constitution of 1946.⁹ Article 1 of the French Constitution of 1958 included a general reference to laïcité for the first time. The official renditions in French and English employ the adjectives “laïque” and “secular” synonymously: “La France est une République indivisible, *laïque*, démocratique et sociale” (France shall be an indivisible, *secular*, democratic, and social Republic).¹⁰ The legal differences between the relatively well-defined laïcité in the Separation Act and the more ambiguous use of “secular” in English are quite significant, as the use of the word “secular” may lead to the assumption that France is a secular state. However, given the precedence of the French text over the English, perhaps it is more precise to speak of a “laicised state” in theorising the legal relationship between the state and religious institutions of civil society. Yet even the reference to “secular” in the English translation does not in itself justify an equation with secularism as a state ideology, despite the fact that the literature on secularism has enthusiastically subsumed laïcité within that discourse. This discursive equation may not be entirely unjustified since the decreasing significance of the French Catholic Church in social and political life was a part of wider processes of laicisation and secularisation.

The *Conseil Constitutionnel*, the highest constitutional council in France, clarified in 2013 that constitutional laïcité ensures the protection of individual rights and freedoms; that laïcité is an organisational principle of the state; and that laïcité de-

⁹ “L’organisation de l’enseignement public gratuit et laïque à tous les degrés est un devoir de l’Etat,” Article 13 of the Preamble of the Constitution of 1946. Available at: <https://bit.ly/3100msG>.

¹⁰ French Constitution of 1958, Article 1. Available in French at: <https://bit.ly/306sd0K>; available in English at: <https://bit.ly/3pyDr7o>.

mands that the state shows respect for all beliefs, specifically through guaranteeing the freedom of worship and the non-recognition of any religion by the state.¹¹ The phrase “organisational principle of the state” implies that *laïcité* (1) is concerned primarily with the organisation of state institutions and (2) operates as a constitutional principle without any mention of its being inherent to the state itself, as might be derived from its prominent position in the 1958 Constitution. In other words, *laïcité* is a governmental technique or tool before it may or may not express a character or an identity. The French Constitution of 1958 also refers to the equality of all citizens before the law, without distinction relative to one’s origin, race or religion, and states that the Republic respects all beliefs (*croyances*); therefore, laws and policies which interfere with one’s religious liberty need a robust justification. This tells us that *laïcité* cannot be used to justify particularly disfavourable treatment of religious minorities or discrimination against members of any religious community.

One could argue that the legal focus on the freedoms of conscience and religion primarily protects the *forum internum*, which assumes that the natural domain of religion is the individual or private space. This focus might imply that secularisation entails privatisation (Luckmann 1967), perhaps leaning on a loosely defined public-private divide in which the state expresses the moderate unitary character of the French Republic (Weiss 2006:363-397). Although the privatisation of religion is potentially problematic from the perspective of the history of toleration (van der Tol 2020), this view was not expressed in either the Separation Act or in the 1958 Constitution. Legally, the law distinguishes two different realms, the realm of conscience and the realm of the public manifestation of religion, with the latter being subject to conditions pertaining to public order. Instead of making a normative assertion about the role of religion vis-à-vis public and private spaces, it makes a normative assertion about the state’s role in regulating religion in public and private spaces, respectively. On this account, *laïcité* does not convincingly represent the normative privatisation of religion as an expression of secularism, at least not constitutionally.

Socio-political allusions to *laïcité* have nevertheless increased beyond the remit of the institutional separation of church and state. Many of the recent controversies over religious freedom have related to society in general, not to the state *per se*. This has been apparent in the restrictions on the full-face veil and the *jilbab* or burkini, as I have written elsewhere (van der Tol 2018, 2021), but it can also be observed in attempts to impose limits on ritual slaughter, discussions of the permissibility of nativity plays in municipal city halls, and controversies surrounding the removal of the *hijab* as an occupational requirement in the private sector. Strictly speaking, none of

¹¹ Conseil Constitutionnel, “Comment la Constitution protège-t-elle la *laïcité*?” Available at: <https://bit.ly/33dNibl>.

these topics fit the state-church binary; however, the currency of *laïcité* as a colloquial synonym of secularity shows that it has also come to signify the relationship between religion and society in the popular consciousness. This instrumentalization of *laïcité* as a culturally normative concept has been criticised by many scholars. For example, historian and sociologist Jean Baubérot (2012:39) argues that the new *laïcité*, which excludes religions from the common frames of culture and identity, is an illegitimate or false laicity. Yet his criticism is primarily cultural and not legal. New or cultural *laïcité* has not yet replaced the Separation Act, but its growing political significance raises questions about the protection of religious minorities in France, especially in the light of the 2021 Law Concerning the Respect for the Principles of the Republic.

The significance of *laïcité* has increased specifically in conjunction with the language of *vivre ensemble*, or living together, in particular. The concept of *vivre ensemble* originates in the utopian literature of the late twentieth century and was presented to a wide audience by Roland Barthes in 1977 as collected in the work *Comment vivre ensemble?* (2002). Like the concept of *laïcité*, *vivre ensemble* does not automatically assume secularism to be a normative good. However, it does facilitate the normative othering of religious minorities on the basis of democratic majoritarianism, which in France appears primarily in the form of policies that restrict the civic participation of Muslims. The Ministry of Culture adopted the concept as early as 2004 in its project *Mission Vivre Ensemble* (Bharat 2020:287; Kiwan 2020), but the idea did not attract international attention until the European Court of Human Rights ruled that the French prohibition of the public use of the face veil¹² did not contravene the European Convention of Human Rights (*S.A.S. v. France* 2014).¹³ Much has been written about this case, particularly about the absence of a sufficient legal basis (Hunter-Henin 2015), its adverse effects on Muslim women (Brems 2016) and its patronising effects on minorities (Yusuf 2014; Beaman 2016). From a political and sociological perspective, it is nevertheless appropriate to reflect on the meaning of the social normativity of secularism relative to the legal concept of *laïcité*.

5. Against separatism: The 2021 *Loi confortant le respect des principes de la République*

In August 2021, the French Parliament approved a new bill on *laïcité*: *Loi no. 2021-1109 du 24 août 2021 confortant le respect des principes de la République*.¹⁴

¹² Loi no. 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public; Art. 225-4-10 Code pénal; Décision No. 2010-613 DC Loi du 7 octobre 2010 interdisant la dissimulation du visage dans l'espace public; Exposé des Motifs Loi no. 2010-1192.

¹³ ECHR 11 July 2014, 43835/11 (*S.A.S. v. France*).

¹⁴ Loi no. 2021-1109 du 24 août 2021 confortant le respect des principes de la République (1). Available at: <https://bit.ly/3EOu8q8>.

This law amended the existing body of French law – criminal, civil and economic – including the 1905 Separation Act. This 2021 “Laïcité Bill” underpins new forms of state interference with the operation of religious institutions and organisations through surveillance, registration of foreign gifts (Articles 21, 76 and 77), and a warning not to undertake activities that might disturb public order (Article 68). The new law also requires sports clubs and other societal associations to commit to the values of the republic and to the prevention of radicalisation (Article 65), thus making the potential radicalisation of Muslim citizens everyone’s concern. The text of the law never mentions Islam or Muslims explicitly, but it is readily apparent that the political debate around the law was ignited by a fear of Islamic separatism (in contrast with *vivre ensemble*), and especially by political suspicion over funding from Saudi Arabia and the Gulf States for Muslim activities in France (Geisser 2021:9; Shakman Hurd and Marzouki 2021). Neither does the text of the law directly refer to secularism or *vivre ensemble*. The central concept of the law is laïcité. Accordingly, this is the first time that the concept of laïcité finds comprehensive expression across the body of French law.

Interestingly, Article 3 requires central and lower-level administrative bodies to appoint a laïcité consultant (*réfèrent*), who is expected to advise on all things relating to laïcité. They must also organise a “Day of Laïcité” each year on 9 December – a nod to the Separation Act of 1905.

Article 3

Les administrations de l’Etat, les collectivités territoriales et les établissements publics mentionnés à l’article 2 désignent un référent laïcité.

Le référent laïcité est chargé d’apporter tout conseil utile au respect du principe de laïcité à tout fonctionnaire ou chef de service qui le consulte. Il est chargé d’organiser une journée de la laïcité le 9 décembre de chaque année. Les fonctions de référent laïcité s’exercent sous réserve de la responsabilité et des prérogatives du chef de service.

This article legally amalgamates the separation of churches and the state with laïcité, not so much as an organisational principle of the state, as the *Conseil d’État* had clarified, but as a cultural liturgy. The cultural-liturgical reminder of laïcité blurs the distinction between constitutional and cultural dimensions of laïcité. It sits uncomfortably in the context of the revisions of criminal and administrative law, as is discussed below.

The law regulates religious institutions which primarily exist for the purpose of worship. These institutions must limit their activities to the exercise of worship (“*associations cultuelles ont exclusivement pour objet l’exercice d’un culte,*”

Article 69), must register the buildings in which worship takes place (Article 75) and are required not to attack public order either in their mission statement or in their activities (Article 68). However, it is unspecified how and under which conditions a mission statement might constitute an attack on public order. Moreover, a threat to public order ordinarily involves a concrete and tangible security issue (Mazeaud 2003; Vincent-Legoux 1996). Moreover, concern for public order usually functions as a legitimization for potential state interference once a breach has actually occurred. The law thus imposes a higher expectation regarding respect for public order on religious institutions than on other entities. This is problematic from the perspective of equal citizenship. Moreover, Article 69 prescribes that such religious institutions must be registered at a departmental level, subject to contestation (*droit d'opposition*) on behalf of the registering office. In the absence of this contestation – note the complementary logic – the institution will be accorded the status of *association cultuelle* for a period of five years, after which it can be renewed. In comparison, the 1905 law operated on the basis of a one-time declaration. In the meantime, the registering entity can set out certain conditions that the religious institution must fulfil and, under specific circumstances, can retract the status.

The law is particularly suspicious of foreign influence. Article 68 prescribes that *associations cultuelles* must be led by a minimum of seven adults, each of whom has either residence or domicile in the catchment area as defined in the statutes. Article 77 stipulates that religious institutions must declare direct or indirect benefits in cash or in kind (totalling tentatively €10,000 per accounting year) from a foreign state, a foreign trust or any foreign legal person who is not resident in France. Non-compliance can result in a fine of a minimum of €3,750, confiscation, prosecution under criminal law and a personal fine for trustees and administrators of €9,000 each. Other organisations must maintain statements of any direct or indirect benefits in cash or in kind and are obliged to include this information in their annual accounts (Article 21). Again, non-compliance can result in a fine of a minimum of €3,750, as well as confiscation of alleged benefits. Individual officers, directors or trustees can be punished with a fine of €9,000. At this point, the law does not prohibit the reception of foreign funds, but the obligation to declare the origin of these funds allows the state to collect data on major gifts from abroad. It is problematic that the law does not distinguish between large and small religious institutions or organisations, and the administrative burden placed on small entities is significant.

The limited time of transition, as laid down in Article 88, raises further questions about the feasibility of compliance, especially as numerous regulatory instructions remain to be issued by *the Conseil d'État*. Time will tell how many institutions and

organisations will face repercussions as a result. Surprisingly, the law does not contain any references to the possibility of administrative appeal of an unfavourable decision, nor does it indicate what happens to an organisation's *association culturelle* status during an appeal. Yet even if more transition time was granted, issues might arise over the calculation of in-kind as well as indirect benefits, and over the administrative skills and training that religious institutions must have available or have access to. Another unresolved issue concerns discrimination between different kinds of religious communities. Although the law targets religious institutions and organisations generally, the requirement of a minimum of seven locally resident adults to constitute an *association culturelle* makes further assumptions about modes of organisation. This requirement might possibly interfere with freedom of association as well as the right to be recognised as a religious institution, and it leaves small communities, such as church plants and network-based communities, in an uncertain situation.

6. Concluding reflection: Laïcité as control

Laïcité as expressed in the 1905 Separation Act and the 2021 law makes surprisingly few references to secularism or secularisation. The 2021 law is similarly concerned about religious institutions and organisations, but it imposes a greater measure of control than the 1905 law. The focus of the 2021 law on security, public order, Frenchness and transparency over foreign influence echoes the concerns of the Napoleonic arrangements of control that the original 1905 Separation Act replaced. In doing so, the new law once again seems to classify religious minorities as security threats. This is consistent with the language used in the restriction of the full face veil and associated liberties taken in the legal reliance on social norms and the concept of *vivre ensemble* in defining public order (van der Tol 2021). The framing of these issues in the context of respect for the principles of the Republic – as the formal name of the law indicates – shows that the concern over security is attached to cultural norms, to Frenchness, to the expectation of conformity. With that, the 2021 law signifies a legal turn in the meaning of laïcité: it institutionalises and constitutionalises social norms to the detriment of religious minorities. In the context of this law, laïcité ceases to be just an organisational principle of the state. Laïcité has become a tool of state control, used generally, pre-emptively and (most importantly) irrespective of the absence or presence of any real, concrete and tangible threat to public order within a specific context of space and time. The 2021 changes thus create a dangerous precedent for legal control over religious minorities, taking liberties beyond the confines of constitutional logic and thus eroding the protection of the freedom of religion in France.

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