



*LAÏCITÉ:*  
BETWEEN FREEDOM OF EXPRESSION  
AND FREEDOM OF BELIEF\*

In France, since the «Muhammad Cartoons» and the attacks in January and November 2015, a public debate steps up, and the discussions have brought into conflict the freedoms of expression and belief. Several worrying questions were raised, and they are still alarming: can freedom of expression be absolute and unlimited? Is it acceptable to mock religions? And if it is acceptable to mock religious beliefs, can then one mock everything so that there cannot be a break with the principle of equality? Another interrogation: is there - in the framework of “*laïcité*” - place for a human right to blasphemy? Or on the contrary can blasphemy be a limit to freedom of expression? Very diverse and often contradictory answers have been given by opposing points of view and through jurisprudence<sup>1</sup>. However, this perplexity concerning freedom of expression and religious freedom is increased by the trouble which for a long time disrupts the concept of “*laïcité*”, nevertheless clearly defined by French legal doctrine as the neutrality of the State and the freedom to practice or not to practice religion, a definition which was giving to each his own, in accordance with the principle of autonomies. One may recall the lecture - in 1949-

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\*This article is a translation of a previously published work in French. See C. Mengès-Le Pape, *La « laïcité »: entre la liberté d'expression et la liberté de croyance*, *Czasopismo Prawno-Historyczne* 2016, vol. LXVIII, no. 2, pp. 207-221. The English version has been prepared by Nikitas Varvitsiotis.

<sup>1</sup> Les nouveaux cahiers du Conseil constitutionnel 2012, no. 36; *Laïcité et liberté religieuse. Recueil de textes et de jurisprudence*, Paris 2011; *La laïcité*, archives de philosophie du droit, 2005, vol. 48; *Le pluralisme*, archives de philosophie du droit 2006, vol. 49; P. Chiappini, *Le droit et le sacré*, Paris 2006; C. Durand-Prinborgne, *La laïcité*, Paris 2004; D. Laszlo-Fenouillet, *La conscience*, Paris 1993; *Convictions philosophiques et religieuses et droits positifs*, Brussels 2010.

of professor Jean Rivero, entitled «La notion juridique de laïcité», which in 2005 was published for a second time in the *Recueil des archives de philosophie du droit* dedicated to “*Laïcité*”<sup>2</sup>. The paper properly placed that notion between neutrality for the State and freedom of belief. However, the uncertainties about that legal concept, which nevertheless seemed to be a matter of agreement, restarted after the presidential election of 1981. It was the big comeback of the question of “*laïcité*”, during the highly symbolic celebrations of the centenary of the Ferry laws of 1881 and 1882. The commemoration prepared by the Ministry of national education was presented in a letter which revealed the movements to come: «Celebrations of the centenary, celebrations of the future»<sup>3</sup>. It was announcing the awakening of discussions which more or less had ceased in the aftermath of the Second World War. Anyway, this promulgation of the secularism laws had already been celebrated, before the war, in 1931: before the centenary, there were the days of the fiftieth anniversary of the Ferry laws, always driven by the same intention to review the definition of the concept, and to connect it with the notion of assimilation. One may recall that in the same time was being prepared the colonial exhibition. Numerous reviews - in 1931 - had dedicated sections to the celebrations. One review among others was *La Révolution prolétarienne* found by Pierre Monatte, one of the prominent figures of revolutionary syndicalism. In that review one can find an article by Antoine Richard who was another militant for the syndicalist movement. The headline of his article is significant in this respect as well, it is marked by disappointment: «La mystique de 1881 et la réalité de 1931» («The mystic of 1881 and the reality of 1931») <sup>4</sup>. Here is an extract which however shows how much things remained heated: «The parliamentary debates in preparation of

<sup>2</sup> J. Rivero, *La notion juridique de laïcité*, La laïcité, archives de philosophie du droit ..., p. 257.

<sup>3</sup> B. Poucet, *Grève et laïcité en France au début des années 1980*, Éducation et sociétés 2007, no. 20 (2), pp. 31-45.

<sup>4</sup> A. Richard, *La mystique de 1881 et la réalité de 1931*, La Révolution prolétarienne 1931, no. 117, pp. 8-186: “First of all I must refer to these secularism laws, the charter of our primary school and even, in part, of the other levels of education. Jules Ferry was minister of public instruction from 1879 to 1883, with a small intermission, and prime minister keeping the same portfolio from 23 September 1880 to 16 November 1881 and from 21 February 1883 to 20 November 1883 and minister of foreign affairs from 20 November 1883 to 30 Mars 1885. It is on his initiative that passed the school laws which form a coherent set driven by the same spirit”.

the fiftieth anniversary», explains Antoine Richard, « were particularly passionate. The House had to hold a night session filled with apostrophes and invectives, a session which nearly failed to turn to a boxing session»<sup>5</sup>, and the author of the article commented «Strange preface for a day of alleged national concord»<sup>6</sup>. During the celebrations of the centenary, in the nineteen eighties, that effervescence resurfaced. But, this time, the religions map of France had changed, and thus one can find the same link between immigration, “*laïcité*” and convergence. Anyway, there was the address of François Mitterrand on May 18, 1987 to the colloquium *La pluralité des cultures*, an address which contains a phrase described by François Mitterrand himself as imprudent: «it’s the one which will be pinned», he added. This is the phrase: «We are French, our ancestors are the Gauls, a bit Romans, a bit germanic people, a bit Jews, a bit Italians, a little bit Spaniards, more and more Portuguese, maybe who knows Poles, and I ask myself whether we are not already a bit Arabs?»<sup>7</sup>. Here one understands - in accordance with the orientation of the speech - the novelty of the situation which puts face-to-face the cultural diversities, and above all implies different religious traditions, the one being marked by the distinction between the political and the religious, and the other on the contrary connecting the political with the religious. On the one hand, there is the «Render unto Caesar the things which are Caesar’s; and unto God the things that are God’s», which sometimes was impeded by gallicanism; on the other hand, the impossibility to separate. Mohamed Charfi, who had been dean of the law faculty of Tunis and minister of national education, has affirmed that impossibility in his work *Islam et liberté*: «if secularism is the separation between Church and State, secularism becomes impracticable for the sunnis, because there would be a separation between the State and nothingness. French style secularism is difficult to fit with sunni Islam which considers religious service as public service; the nature of Islam is such that the State cannot evade its religious obligations to appoint the imams who direct the prayer in the mosque, the professors who teach in the universities of

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<sup>5</sup> *Ibidem*, pp. 7-185.

<sup>6</sup> *Ibidem*.

<sup>7</sup> Address of François Mitterrand, President of the Republic, on the occasion of the colloquium *La pluralité des cultures* organized in Sorbonne by the *Fondation France-Libertés*, Paris, 18 May 1987.

theology and the muftis who give to the believers advice on religious matters»<sup>8</sup>. This juxtaposition of different traditions puts into question the foundations of “*laïcité*” which has acquired constitutional status and - to report the freshest news - has just been considered by pope Francis as «exaggerated and heritage of the French Revolution»<sup>9</sup>. This is one of the themes addressed by the supreme pontiff in the interview he granted to the journal *La Croix*, on May 16, 2016. Then, just in the middle of these controversies, one can see above all the strong tension between the freedoms of expression and of belief which goes on increasing, as if the two normative orders were no longer compatible, while - in the Christian tradition - Caesar and God must be distinguished and must proceed to a just division of tasks in order to be in a relationship of reciprocity, this is said in the encyclical *Deus caritas est*<sup>10</sup>.

### The comeback of the question of “*laïcité*”

The paper of Jean Rivero started with a formula often used for his provocative attack on the vocabulary of separation: “*Laïcité*”, said he, «that word smells like gunpowder, it awakes contradictory passionate resonances», and Jean Rivero continued: «this contradiction is not only the normal one which divides opinions for or against a clear notion; it concerns the content of the notion itself, and the meaning of that word»<sup>11</sup>. What the professor of public law did was to show the confusion concerning words and meanings when they derive from a free discussion for the reform of the legal order. Here can be seen one of the movements of the formation of law which comes from ideas to a rule of law. But there are other ways to make law, the most traditional way being to derive positive law from natural law, practices or necessities. Here, for the elaboration of the legal principle of “*laïcité*”, remaining, therefore, fully in the modern world, one can see first of all the effervescences

<sup>8</sup> M. Charfi, *Islam et liberté, le malentendu historique*, Paris 1998, p. 193.

<sup>9</sup> Interview with pope Francis, 16 May 2016, *La Croix*; “In short, this is what fascinates me about France. On the one hand, this exaggerated secularism, heritage of the French Revolution, and, on the other hand, so many great saints”; *INTERVIEW Pope Francis*, [online] <https://www.la-croix.com/Religion/Pape/INTERVIEW-Pope-Francis-2016-05-17-1200760633> [access: 10.11.2018].

<sup>10</sup> *Encyclical Letter Deus caritas est of Benedict XVI to the bishops, priests and deacons, men and women religious and all the lay faithful on christian love*, Paris, 2006.

<sup>11</sup> J. Rivero, *La notion juridique de laïcité ...*, p. 257.

connected with the contrasting opinions, and from these sometimes heated discussions derives a rule of law. This is the whole history of the law of 9 December 1905, which certainly had been prepared by a succession of partial separations, but whose wording was above all influenced by speeches of MPs, by ideas which find their way and, often, eventually prevail; one can think of the speech that Aristide Briand delivered at the session of 3 July 1905 just before the vote on the law of separation. Here is what - concerning the legislative process which led to the law of separation - said René Rémond, in 2005, at the colloquium of Sorèze: «We have seen which was the role of personalities, in those times it was possible, by the power of speech or by pertinent arguments, to alter the course of the parliamentary debate and to modify the vote of part of the MPs»<sup>12</sup>. It is the art of speech which enters into the domain of law. However, usually the two domains, that of tribune and that of law, are and always must be distinct. It is about two worlds certainly of greatest importance, but which do not obey the same methods and do not have the same goal. In the West, the world of ideas allows itself a plurality of meanings. Since the Renaissance and the Enlightenment, it is the usual game of opinions clashing with each other, and is also a rule in the ordinary language which is marked by polysemy, while, normally, legal art requires stable and clear definitions: in accordance with roman tradition, law gives to words a meaning and gives to words only one meaning. Above all, law never betrays its objective goal which is not that of discussions, which have filled the twentieth century, but the goal of the just in the aristotelian sense of the term, the law not having in mind the society at the risk of an ideological drift, the drift of logocracy - i.e. the rule of words. Thus, the difficulty is of large scale, having brought together two domains, because debates always weaken legal concepts which therefore become largely uncertain in the eyes of the public. This is the case for “*laïcité*”.

One may recall, back to the invention of that word in the eighteen seventies<sup>13</sup>, “*laïcité* ” was made fun of by several sometimes antireligious

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<sup>12</sup> R. Rémond, *Conclusion*, [in] *Regards croisés en 1905 sur la loi de séparation des Églises et de l'État*, 2005, p. 304.

<sup>13</sup> “It was in 1871 that the word «*laïcité*» appeared: the lexicographer Émile Littré enlisted it with a reference to the journal *La Patrie*. However, one had to wait until 1878 when the concept was really forged and introduced by the philosopher of the education Ferdinand

opponents, and still is more or less burdened by adjectives describing it as guardian of the religious freedoms or on the contrary as factor emancipating from the same freedoms. Since the nineteen eighties, which represent a very important step for that notion, we hear people talking about positive or negative, true or falsified, closed or open, rigid or flexible “*laïcité*”, about “*laïcité*” of dialogue or of combat, some arriving at the point of talking about a secular or on the contrary an ideological and spiritual “*laïcité*”. To “*laïcité*” was joined also the adjective of mystic: during the fiftieth anniversary of the Ferry laws, which was driven by the same intention to review the definition of that concept, Antoine Richard talks about the mystic of “*laïcité*” and insists saying: « Mystic, have I said, and the word is not misplaced, it is the positive part of that task of “*laïcité*”. Let us secularize ethics and philosophy as we secularized the State, with the schoolteacher priest of “*laïcité*” »<sup>14</sup>. Since then, “*laïcité*” has also been seen as that extraordinary principle which unites differences, and this is one of the last definitions one can list since January 2016. It is a contemporary resurgence of the *coincidentia oppositorum* which was found by Nicholas of Cusa at the fall of Constantinople and later has fascinated gnostic circles. Thus, with such a list of adjectives and scatterings, the public attend the spectacular appearance of the Babel or post-Babel syndrome. Therefore, it seems that it is made impossible to design an objective definition of that principle, which appears to be more and more elusive. Émile Poulat, who was one of the specialists on “*laïcité*” and has published a lot of papers in *Politica hermetica*, pointed out the maybe hidden or enigmatic nature of that term: « “*laïcité*”, no one knows what people are talking about »<sup>15</sup>. Later, on December 31 of last year, at the apparition of the practical guide *La laïcité au quotidien*<sup>16</sup>, Régis Debray - in a pretty funny style - deplored, also himself, the confusion which persists in discussions: « “*laïcité*” », said he, « is a kind of a totem, of a grigri which eve-

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Buisson in his *Dictionnaire de la pédagogie*, considered as the «Bible» of the secular school”, see P. Portier, *Aux sources de la laïcité*, CNRS Le journal 2015.

<sup>14</sup> A. Richard, *La mystique de 1881 et la réalité de 1931 ...*, pp. 7-185.

<sup>15</sup> Poulat É : *Le code de la laïcité est insatisfaisant*, [online] [https://www.la-croix.com/Religion/Actualite/Emile-Poulat-Le-code-de-la-laicite-est-insatisfaisant\\_EP\\_-2011-11-01-730516](https://www.la-croix.com/Religion/Actualite/Emile-Poulat-Le-code-de-la-laicite-est-insatisfaisant_EP_-2011-11-01-730516) [access 10.11.2018].

<sup>16</sup> R. Debray, D. Leschi, *La laïcité au quotidien, Guide pratique*, 2015.

ryone invokes in a mode of incantation »<sup>17</sup>. For France, this dispersion and these ambiguities can mean ignorance of the firmness of the secular reality, which is embarrassing, every one giving his opinion and keeping up doing so. Then, how to explain the commitment of the public to “*laïcité*” when “*laïcité*” itself is ignored as to its origins and its nature, when its definition has been made very uncertain? Today, one cannot say that it is about old polemics no longer existing, because there are always domains where quarrels have not ceased. However, in front of the upheaval of ideas, there is an aspect which can be reassuring, it is to see to what extent these effervescences and battles can be useful, they safeguard space for the freedoms and the democratic process. On the contrary, a fixed definition could be more binding. One can recall the work of the Polish poet Czesław Miłosz published in Paris, in 1953, *La pensée captive, Essai sur les logocraties populaires*<sup>18</sup>; against single thought or against the new secular faith of dialectic materialism, one can find there a remark perhaps to be applied on French situations: Westerners compare «democracy to a raft where disorder rules, and where each one rows in a different direction. Everybody shouts, insults, and it is not easy to agree on the course to follow» (free translation). And Miłosz, who in October 1980 received the Nobel Prize of Literature while strikes were extending everywhere in Poland, added: «In comparison to a raft, the quick galley of the dictatorship, propelled by rowing, is an imposing spectacle. However, sometimes it comes that the poor raft is floating while the galley has sunk» (free translation)<sup>19</sup>.

The debates about “*laïcité*” make us think, a lot, of that raft where there are many disputes. This is rather a good sign. However, in these usual disputes, limits must be set never to be crossed, the limit of hatred, and this term was used by the legislator in July 1972, and that of violence of thoughts and acts. It is well known, everything starts with the thought and with the word, with a hegemony of the spirit. However, violence has entered into one of the battles provoked by the principle of “*laïcité*”, i.e. the battle between the partisans of freedom of expression and those who

<sup>17</sup> Régis Debray: *la laïcité, c'est une sorte de totem, de gri-gri*, [online] <https://www.franceinter.fr/emissions/le-7-9/le-7-9-30-decembre-2015> [access: 10.11.2018].

<sup>18</sup> Cz. Miłosz, *La pensée captive, Essai sur les logocraties populaires*, Paris, 1953, p. 58.

<sup>19</sup> *Ibidem*, p. 58.



on the contrary defend freedom of belief without being necessarily opponents to the freedom of expression, and vice versa. It must be noted that the confrontations are not so simple. There are not only two philosophical systems clashing with each other; the contrariety is much more complicated, as the confronting systems do not belong to the same category.

### **The face-to-face between freedom of expression and freedom of belief**

These questions, which today cause a lot of worries about the freedoms, particularly concerning religious insults, show a change in the way to see the link between God and humans, a change having put man at the center of the universe, in the place of God, this is the article «encyclopédie» in the *Encyclopédie* of Diderot. But history shows that it is not a recent crisis, the discussions having spanned the centuries; they reappear always in times of dislocations. Among the periods of intense debates, there was the sixteenth century, and the rediscovery of pagan antiquity, with the new ideal of freedoms guaranteed by the State, with the emergence of new forms of blasphemy due to libertinage. One can see here a challenge by man to God, by the human word which intended to hit and hurt the Word of God.

Previously, a medieval gloss was seeing in blasphemy a mixt misdeed<sup>20</sup>. The doctors of the Church were saying that it was «a sin of the tongue, the tongue of hell»<sup>21</sup>, as shown in the work of Corinne Leveleux, *La parole interdite. Le blasphème dans la France médiévale*<sup>22</sup>. As for blasphemy, Thomas Aquinas gives a clear view, where one can clearly see the distinction between God and man, the relevant passage of the Summa being well known for this comparison between what can affect man and God: «If we compare murder and blasphemy as regards the objects of those sins, it is clear that blasphemy, which is a sin committed directly against God, is more grave than murder, which

<sup>20</sup> B. Basdevant-Gaudemet B., *Le blasphème, législation canonique et séculière, des Temps modernes au code de 1983*, [in] *Le blasphème: au péché du crime*, ed. A. Dierkens, Schreiber J-P., Brussels 2011, pp. 95-106.

<sup>21</sup> *Ibidem*.

<sup>22</sup> C. Leveleux, *La parole interdite. Le blasphème dans la France médiévale (XIII<sup>e</sup>-XVI<sup>e</sup> siècles). Du péché au crime*, Paris 2001.

is a sin against one's neighbor. On the other hand, if we compare them in respect of the harm wrought by them, murder is the graver sin, for murder does more harm to one's neighbor, than blasphemy does to God»<sup>23</sup>. Subsequently, for the Catholic Church, the medieval tendency to distinguish, to act carefully, to apply the notion of blasphemy only to Christians, was maintained. One can find that firm attitude in eighteenth century, in the *Dictionnaire de Trévoux*<sup>24</sup>, later in nineteenth century and in the codes of canon law of 1917 and 1983: it is considered that blasphemers are only Catholics who offend their own God. This argument is of importance, anyway it could provide elements to serve as a basis for reflexion and to resolve numerous conflicts.

After the doctors of the Church, come the doctors of the law. In an environment very early filled with gallicanism, jurists have described blasphemy as a crime of obvious gravity. With the triumph of the State, blasphemy became a crime of high treason which the parlements have punished more severely than the ecclesiastical courts. During the second half of the eighteenth century, when these crimes were punished more rarely, a lot was written in favour of blasphemy<sup>25</sup>. Thus, in France, for modernity and against catholicism, a strong blasphematory tradition was established. The thinkers of Enlightenment defended this absolute freedom of expression which the Declaration of the Rights of the Man and of the Citizen of 26 August 1789 did not endorse, since articles 4, 10 and 11 require the limits of the law in order to avoid abuses. It seemed already difficult to strike, from a legal point of view, a balance between the freedom of expression advocated by the Republic of Letters and religious freedom, which quickly ceased to coincide. And against religion, was often invoked again the formula of Saint-Just: no freedom for the enemies of freedom. The Revolution came to strengthen, all at once, the confrontation between freedom of expression and freedom of belief, and also to level religious

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<sup>23</sup> Thomas Aquinas, *Summa Theologiae, secunda secundae*, 1999; question 13: "The sin of blasphemy in general, article 3: Whether the sin of blasphemy is the greatest sin?"

<sup>24</sup> Article «blasphème» ; *Dictionnaire universel françois et latin contenant la signification et la définition tant des mots de l'une et l'autre langue, avec leurs différents usages, que des termes propres de chaque état et de chaque profession*, or *Dictionnaire de Trévoux*, printed in Nancy in 1740 by Pierre Antoine.

<sup>25</sup> J. Hoareau-Dodinau, *Dieu et le Roi. La répression du blasphème et de l'injure au roi à la fin du Moyen Âge*, Limoges 2002.

opinions, previously considered superior, because it is about the relationship with God. Article 10 of the Declaration is the one which made this leveling: «No one may be disturbed for his opinions, even religious ones, provided that their manifestation does not trouble the public order established by the law»<sup>26</sup>. In modern times, this difficult confrontation seems to benefit freedom of expression. Works of religious satire have become - since 1984 - more numerous, and have led to judicial proceedings. Several criminal proceedings were instituted against the editor-in-chief of *Charlie Hebdo*. It was also the release of movies which were contested by part of the public, as *The Last Temptation of Christ*, directed by Martin Scorsese, and the Cour de Cassation held in October 1990 that «are of equal value the principle of freedom of expression, in particular in the artistic domain, and the principle linked to the respect owed to the beliefs of Martin Scorsese»<sup>27</sup>. Then, there was the film *Hail Mary* of Jean-Luc Godard, with a trial lost by the applicants<sup>28</sup>; or the controversial

<sup>26</sup> Article 4: “Liberty consists of doing anything which does not harm others: thus, the exercise of the natural rights of each man has only those borders which assure other members of the society the fruition of these same rights. These borders can be determined only by the law», article 10 : «No one may be disturbed for his opinions, even religious ones, provided that their manifestation does not trouble the public order established by the law”, article 11: ”The free communication of thoughts and of opinions is one of the most precious rights of man: any citizen thus may speak, write, print freely, except to respond to the abuse of this liberty, in the cases determined by the law, see *Declaration of the Rights of the Man and of the Citizen*, 26 August 1789.

<sup>27</sup> J. Boulègue, *Le blasphème en procès, 1984-2009, L'église et la mosquée contre les libertés*, 2010; *Cour de cassation, first civil chamber, sitting on 29 October 1990*, no.: 88-19366: “But whereas, since, on the one hand, the principle of expression, in particular in the domain of artistic creation, and, on the other hand, the principle of the respect owed to beliefs and the right to practice religion are of equal value, it was for the tribunals of fact to decide about the appropriate measures to impose the necessary equilibrium; whereas, without denying that an abuse of right is possible in such domains, which then could lead to manifestly unlawful disturbances, the Court of appeal -which stated that it must be avoided that «one finds himself, because he was not warned, in a situation where he is offended in his profound convictions» as it must equally be avoided to affect the freedom of expression- was entitled to take the view that, under the circumstances, there was not a manifestly unlawful disturbance and to decide, exercising its prerogative to assess facts, about the most appropriate measures to maintain the right balance between contrasting rights and freedoms; whereas, by doing so, the Court of appeal did not take account of the personal subjectivity of this or that viewer and, by the quality of the ordered measures of being general, answered the concerns expressed by the arguments put forward; whereas none of the parts of the plea can be accepted”.

<sup>28</sup> J. Boulègue, *Le blasphème en procès, 1984-2009... , Cour de cassation, first civil chamber, sitting on Tuesday 21 July 1987*, no.: 85-15044: “whereas, having confirmed the reasons given in the order contested before it, to the effect that the author of an intellectual work must enjoy the

photo *Piss Christ*, and the playwright presented in the festival of Avignon, *On the Concept of the Face, Regarding the son of God*, by Romeo Castellucci, then there was the programming of *Golgotha Picnic*. These works triggered debates which profoundly divided public opinion, lawsuits were filed, but they were not successful<sup>29</sup>.

It must also be reminded the trial of Michel Houellebecq for what he said about Islam. Furthermore, among the last troubles in France, one can think of the trials of *femen* militants in 2013, who were not convicted.

These cases reflect the discussions on the concept of freedom of expression against freedom of belief, with the interventions of the most renowned polemicists who proclaimed an absolute and unlimited freedom of expression. In the context of the controversy and as blasphemy could not serve as a limit to the freedom of expression, was formulated the maxim: freedom cannot be shared, freedom is irreducible, with the postulate: freedom is the principle; restriction is the exception<sup>30</sup>. It was also the campaign launched by Reporters Without Borders (RWB) after the attacks in January 2015, which was followed by very few people, since the proposed declaration on freedom of expression was signed only by about thirty religious dignitaries out of 10000 expected signatures, which can show - in a period of turmoil - the fatigue of French society. Very rapidly, the debates turned from the infinite freedom of expression to the proclamation of the absolute right to blasphemy, sometimes confused with the right of humour, blasphemy and humour being no more distinct, while no one benefits from speaking in an unclear language. Later, in January 2015, after the attacks, appeared a new element, i.e. the sacralization of the right to blasphemy with the often used formula «our sacred right to blasphemy which must be guaranteed» or even another slogan «The right to blasphemy, our most sacred good». Here, one can realize the overturn

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right of freedom of expression, without restrictions other than those imposed by law, when, in its purpose or in its expression, the work does not justify crimes or does not incite to commit crimes, the Court of Appeal, which accepted that the trouble caused by the film at issue is due to its hurtfulness for diverse categories of persons, has, by that assessment of facts, excluded the crime of incitement to discrimination, to hatred and to violence and answered the arguments put forward”.

<sup>29</sup> *Ibidem*.

<sup>30</sup> The formula was given by the judgment Baldy, Conseil d’État, 10 August 1917, “Freedom is the rule, police restrictions are the exception”, and now is simplified and extends to disputes other than those of public order to which was referring the case-law of the Conseil d’État.

which is going on and which can transform the absolute freedom of expression into negation of religious freedom.

In addition to discussions, books were written too, in 1989 appeared *Le droit de blasphémer* of Orlando de Rudder<sup>31</sup>, who justifies - without fearing the amalgamation of the two - religious insults as a foundation of democracy. Since 2015, blasphemy has become also the central theme of numerous colloquia and essays, and this profusion shows the sensitivity of the subject: a meeting was held in Poitiers, *Le blasphème dans une société démocratique*<sup>32</sup>. Then, were published *L'éloge du blasphème* of Caroline Fourest<sup>33</sup> and several histories of blasphemy, for instance those of Alain Cabantous and of Jacques de Saint-Victor<sup>34</sup>.

Through that profusion of declarations and writings, an issue was raised, that of the legal limits of the freedom of expression which were acknowledged by article 4 of the Declaration of 1789, later specified by the law of 29 July 1881 on the freedom of the press. Then, came the Pleven law of 1 July 1972 which created, in its article 1, a new criminal offence, that of «incitement to discrimination, hatred or violence against a person or group of persons on the basis of their origin or belonging to or not belonging to a particular group of persons. ethnicity, nationality, race or religion»<sup>35</sup>. That offence was punishable by imprisonment of one month to one year and by a fine of 2 000 to 300 000 francs. Thus, the text of 1972 showed, on legal terms, the withdrawals of communities and the exclusions, which, in France, were starting to intensify, without however acknowledging the principle of respect of religions. In contemporary France, legal doctrine explains that human rights seek to protect individuals and not systems of thought. Thus, is made an assimilation between religions and an abstract idea, which previously were distinct. One can understand how much modern times have departed from Christian tradition to go to a deism which can stand unbelief.

<sup>31</sup> O. de Rudder, *Le droit de blasphémer*, Paris 1989.

<sup>32</sup> F. Marchadier, *Le blasphème dans une société démocratique*, Paris, 2016.

<sup>33</sup> C. Fourest, *L'éloge du blasphème*, Paris 2015: "Threatened by the fanatics, censored by the cowards, the free spirits of all continents will no more finish fighting, in all fronts, to maintain an enlightened world. The light which guides them is called the right to blasphemy".

<sup>34</sup> A. Cabantous, *Histoire du blasphème en Occident*, Paris, 2015; J. de Saint-Victor, *Blasphème: brève histoire d'un crime imaginaire*, Paris 2016.

<sup>35</sup> *Loi n° 72-546 du 1 juillet 1972 relative à la lutte contre le racisme, law on combating racism.*

Moreover, another interrogation, legal and political as well, is bothering, one can ask himself today whether it is not contradictory to talk about integration of foreigners and in the same time to proclaim the right to blasphemy. Is it not astonishing to mock the religious beliefs of those the governments want to shelter on the national soil and encourage religious insults? The right to blasphemy which is a subjective right must deal with the legal principle of responsibility. For jurists, this principle of responsibility is the bedrock of objective law, it is a principle of law, originating in the maxim of roman law *justicia praecipit suum cuique reddere*. Therefore, freedom is a subjective right which cannot be dissociated from responsibility. Freedom and responsibility go together. When violence worsens crises, the most easy and the most seducing solution - which however is not certainly the best - is to say what is good according to the legislator<sup>36</sup>. Thus the law becomes sovereign master of good and evil, sovereign master of freedoms, which was never the role of the law, except during ideological drifts.

In that respect, article 2 of the law of 1905 on the separation of Churches and the State proclaims that «the Republic does not recognize any worship»<sup>37</sup>. However and paradoxically, the acknowledgement of the right to blasphemy becomes a negation of the law on separation, a negation of “laïcité”. If blasphemy does not exist as a criminal offence under French law, if that notion is not legally defined, how can there be a right to blasphemy?<sup>38</sup> Against the sometimes affirmed will to make of blasphemy an individual right, there is a word of caution and a reasonable interrogation, often renewed by jurists, is it indeed necessary? In French society, blasphemy is a religious insult, it is not a political freedom. Here as well, one must not neglect distinctions, in order to avoid the risk of subjecting the legal to a neomoral order and «to bring it under the thumb of the science of the individual in the disregard of the purposes of law»<sup>39</sup>.

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<sup>36</sup> J.-M. Trigeaud, *Mœurs religieuses et laïcité ou la limite des lois non écrites, La laïcité, archives de philosophie du droit ...*, pp. 57-73.

<sup>37</sup> Article 2 of the *Law of 9 December 1905 on the separation of Churches and the State*.

<sup>38</sup> I. de Gaulmyn, *Le droit au blasphème, nouveau droit français*, [online] <https://religion-gaulmyn.blogs.la-croix.com/le-droit-au-blaspHEME-nouveau-droit-francais/2015/01/20/> [access : 10.11.2018].

<sup>39</sup> M. Villey, *Le droit et les droits de l'homme*, Paris 1983, p. 42.

In order to understand the challenges posed by all that turmoil which increasingly fills the air in the West, one should read again the essay of Michel Villey, *Le droit et les droits de l'homme*; there one could find a reflexion on the use of the freedoms of expression and of belief. There, Michel Villey showed how the freedom of expression is not for all and to the interest of all, but for a small number, for an élite, while the freedom to believe or not to believe is for all ... however, this elitist movement - explains the philosopher – represents a threat of decomposition, when freedoms are not distributed in an equitable way between religions and State, between God and Caesar<sup>40</sup>.

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<sup>40</sup> *Ibid.*

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