

2023

Laicite or Laicita: The Regulation of Religious Symbols in French and Italian Public Schools

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Recommended Citation

Aubrie Kent, *Laicite or Laicita: The Regulation of Religious Symbols in French and Italian Public Schools*, 73 Emory L. J. 191 (2023).

Available at: <https://scholarlycommons.law.emory.edu/elj/vol73/iss1/4>

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LAICITE OR LAICITA: THE REGULATION OF RELIGIOUS SYMBOLS IN FRENCH AND ITALIAN PUBLIC SCHOOLS[†]

ABSTRACT

Both France and Italy regulate the presence of religious symbols in public classrooms with the aim of transmitting national values and culture to students and promoting state unity. As more students of non-Christian backgrounds immigrate to France and Italy from outside Europe, the debate around religion in public schools has intensified, especially concerning Muslim students. France enforces a strictly neutral secular space by requiring the removal of any religious symbols, including head coverings like hijabs and yarmulkas. Italy mandated the display of the crucifix in every public school classroom until 2021, when the option was introduced to remove it. A comparison of these two radically different approaches to the presence of religion in schools reveals flaws in the assumption that a strictly neutral space is more beneficial to all students, particularly those from minority religious and cultural backgrounds.

*As a product of their long and complex relationships with the Catholic Church, France and Italy have developed differing models of secularism that have shaped their legal frameworks for the regulation of religion in public life. French secularism, known as laïcité, is built on the rejection of religion and demands the removal of religion to protect state unity. The Italian model of secularism, known as laicità, developed out of an accommodating relationship with the Church and reliance by the state on the unifying power of religion, and as a result is inclusive of religion. This Comment examines the way these opposing conceptions of secularism shape the legal approach to religious symbols in public education through two European Court of Human Rights cases, *Dogru v. France* and *Lautsi v. Italy*.*

The centrality of the rejection of religion to French secularism results in a legal framework that treats all religious symbols as inherently threatening. The application of this framework demands that students of minority religions either remove important outward displays of religious and cultural identity or leave school. Comparison of France and Italy's legal frameworks demonstrates that Italy's flexible approach to religious symbols is more conducive to the

[†] This Comment received the Mary Laura "Chee" Davis Award for Writing Excellence.

transmission of national culture and values to students, and that the serious failings of France's rigid legal approach could be cured by an adoption of some of these flexible elements.

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INTRODUCTION

For both France and Italy, public classrooms are essential spaces for the communication of national values and culture to children, particularly those from immigrant families. With increased migration of students from non-Christian backgrounds, the debate around the presence of religion in public schools has intensified, especially in France. In both states, there is an increased focus on maintaining national unity by successfully integrating students from non-European and non-Christian backgrounds into mainstream national culture. Despite their shared goal of integrating these students through public education, the two nations take radically different approaches to the regulation of religion in public classrooms. Although much of Western liberal thought assumes that

state neutrality toward religion is necessary to protect religious freedom, especially that of minorities, the evaluation of Italy and France's regulation of religion in public education suggests this is not inherently true.¹ France, which banned the display of religious symbols in schools in 2004, rejects the presence of religion in public schools completely.² Italy, by contrast, mandated the display of the crucifix in public school classrooms until 2021, when it was made optional.³ Under normative liberal thought, the assumption would be that France's approach, by enforcing a strictly neutral space, is more beneficial for students of all backgrounds. Contrary to this assumption, a complete removal of religion from public education is more harmful to children than a classroom that explicitly favors a majority religion because it demands either the removal of important outward displays of identity or the removal of the student themselves. This Comment argues that Italy's flexible approach to religious symbols in public schools is more conducive to the transmission of national culture and values to students, and that the serious failings of France's rigid legal framework could be cured by an adoption of some of these flexible elements.

Part I offers an overview of the major developments of France and Italy's relationships with the Catholic Church that shaped their respective versions of secularism. Section A discusses the foundations of France's rejection of religion in public life following the Revolution and the birth of French secularism, known as *laïcité*. Section B examines Italy's relationship with the Vatican and the role of Catholicism in Italian unification, which laid the foundation for a cooperationist relationship with religion. Section C compares the divergent approaches to secularism in the context of that history. Part I advances the argument that understanding the historical roots of the two different

¹ See J.H.H. Weiler, *Freedom of Religion and Freedom from Religion: The European Model*, 65 ME. L. REV. 759, 760, 767 (2013) (arguing that the French and American models of secularism are normative and exploring the flaws in the assumption that a religious state necessarily violates the principles of freedom of religion and freedom from religion); Mariagrazi Santagati et al., *Religiosity and School Integration Among Italian and Non-Italian Students. Results From a Survey in Multi-Ethnic Classrooms*, 57 STUDI DI SOCIOLOGIA 197, 198, 203, 206 (2019) (arguing that religious diversity is a positive factor in the integration of immigrant and second-generation students, rather than an impediment and a source of social division).

² See *Dogru v. France*, App. No. 27058/05, Eur. Ct. H.R. ¶¶ 5–6 (Dec. 4, 2008), <https://hudoc.echr.coe.int/eng?i=001-90039>; Loi 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics [Law 2004–228 of March 15, 2004, Concerning, As an Application of the Principle of the Separation of Church and State, The Wearing of Symbols or Clothing Manifesting Religious Affiliation in Public Primary and Secondary Schools], CODE DE L'ÉDUCATION [C. EDUC.] [EDUCATION CODE], Mar. 15, 2002, art. L161-1, L162-2, L163-1, L164-1, L451-1.

³ See *Lautsi v. Italy*, App. No. 30814/06, Eur. Ct. H.R. ¶ 17 (Mar. 18, 2011), <https://hudoc.echr.coe.int/eng?i=001-104040>.

relationships with Catholicism is essential for understanding the way the states approach religion in public education.

Part II examines the two European Court of Human Rights cases *Lautsi v. Italy* and *Dogru v. France*, assesses the effectiveness of the two approaches to regulation of religious symbols in public classrooms for the stated goals of public education, and suggests beneficial modifications to France's legal framework. Section A discusses *Lautsi* and how the Italian government's arguments in favor of the display of the crucifix in classrooms reveal Italy's view of religious symbols as communicative of positive values. Section A addresses the display of the crucifix as representative of a type of secularism that is inclusive of religion, although it favors the majority religion. Section B examines *Dogru* and the French government's arguments in support of expelling a student for wearing a headscarf. These arguments demonstrate the centrality of a rejection of religion to French secularism. Section B argues that this model of secularism leads to the treatment of religious symbols as inherently threatening, which leaves no room for flexibility in their regulation. Section C compares the approaches of Italy and France and how each model of secularism informs assumptions about religious symbols and, in turn, the legal approach to their presence in public education. Section C argues that Italy's positive conception of religious symbols allows for greater acceptance of non-Christian religious symbols, despite the assumption that the affiliation of one religion with the state is inherently exclusionary.

Finally, Part III assesses the benefits and failures of each approach to religion in public schools with respect to the shared goals of the two nations for public education. It argues that although Italy's inclusion of Catholicism in public classrooms creates an explicitly religious space that may be alienating to students, the inclusion of religion is more conducive to integration and the creation of a positive learning environment than the strict removal of religion. Part III discusses the major failures of the French laws on religion in public schools, including the removal of students from schools and the production of negative school experiences. It argues that the French approach is ill-suited to addressing contemporary religious issues because it is a rigid system that was designed to remove the Catholic Church from influence in education rather than to aid in the integration of people from minority religions. Lastly, Part III suggests that France would be better positioned to meet its goals of integration, social cohesion, and communication of national values by softening its approach to religious symbols through the adoption of elements of the Italian approach

and several abandoned proposals from the report that led to the ban on religious symbols in schools.

I. THE DEVELOPMENT OF CONTEMPORARY SECULARISM IN FRANCE AND ITALY FROM HISTORICAL CONFLICTS WITH THE CATHOLIC CHURCH

France and Italy's historical relationships with the Church shaped their two different models of secularism and their understandings of the role of religion in public life. France's rejection and removal of the Catholic Church from influence in public life produced a rigid separation between church and state and a hostility toward religion that persists today. Italy, by contrast, developed an accommodating and flexible approach toward the Church that capitalizes on the power of religion as a tool for social cohesion. Section A discusses France's frequently hostile relationship with the Catholic Church and how the removal of the Church was accomplished following the Revolution. Section B discusses Italy's flexible and cooperative relationship with the Church and the unifying power of Catholicism in Italy. Section C compares the divergent views on religion that developed in each state.

A. *France from the Revolution to the Twentieth Century*

France's current contentious relationship with religion is a product of various political and social upheavals that began in the Revolutionary period. Following the wars between the Catholic majority and Protestant minority that marred the sixteenth century (1562–1598), the power of the monarch in France became absolute, and Catholicism folded into the power of the king.⁴ In the era following the 30 Years' War of 1618–1648, the power of the monarch was justified by the divine right of kings, a belief that kings derived their authority to rule directly from God.⁵ The divine right of kings merged religion and the state and allowed the Catholic Church to dominate politics and society.⁶ The domination of religion continued into the eighteenth century when the idea of a French Catholic Church as separate from the papacy and under partial control of the monarch emerged.⁷ This period of political and social control is the foundation of the

⁴ Jean Bauberot, *A Brief History of French Laïcité*, in RELIGION AND SECULARISM IN FRANCE TODAY 11, 12 (Philippe Portier & Jean-Paul Willaime eds., 2022).

⁵ See *Divine Right of Kings*, BRITANNICA, <https://www.britannica.com/topic/divine-right-of-kings> (last visited Jan. 9, 2023).

⁶ See Kay Chadwick, *Introduction* to CATHOLICISM, POLITICS, AND SOCIETY IN TWENTIETH-CENTURY FRANCE 1, 1 (Kay Chadwick ed., 2000).

⁷ Bauberot, *supra* note 4, at 13.

attitude, which persists in modern France, that religion in the public sphere is something the state must guard against to protect the people.⁸

The Revolution of 1789–1799 ended the reign of the monarch and the Church.⁹ In the second year of the Revolution, the Revolutionaries attempted to eradicate Catholicism by destroying churches, desecrating instruments of the sacraments, and even killing priests.¹⁰ Church property was seized by the state in 1790 as part of the effort to remove all institutions of the *Ancien Regime*.¹¹ This campaign against religion had far-reaching consequences for attitudes toward religious institutions after the Revolutionary period.¹² Religious freedom was introduced through the Declaration of the Rights of Man and the Citizen in 1789, and the Constitution enacted by the Legislative Assembly in 1791 divested the state of many of its religious characteristics and removed the Church from most of its prominent positions in public life.¹³ Although the Constitution retained the monarchy, it did away with the divine right of kings and declared that the king ruled only to the extent of the law and required him to take an oath to the nation and the law.¹⁴ The Revolutionary reforms laid the foundation for the separation of church and state in France, but it was the conflicts between the state and the Catholic Church during the nineteenth century that created many of the lingering hostilities toward religion seen in France today.¹⁵

In the nineteenth century, Napoleon reached an agreement with papal and clerical representatives from both Rome and Paris that further limited the scope of the Catholic Church in France.¹⁶ The agreement, known as the Concordat, identified Catholicism as the religion of the majority of French citizens but no longer recognized it as the official state religion.¹⁷ In the following year, Judaism, Lutheranism, and Protestant churches were sanctioned by the state and

⁸ See *infra* note 64 and accompanying text.

⁹ *Id.*

¹⁰ Ann Margaret Doyle, *Catholic Church and State Relations in French Education in the Nineteenth Century: The Struggle Between Laicite and Religion*, 9 INT'L. STUDIES CATH. EDUC. 108, 109 (2017).

¹¹ Doyle, *supra* note 10, at 109–10. The *Ancien Regime*, meaning “old order,” refers to the political and social system of France before the Revolution, under which society was controlled by the clergy, nobility, and the Third Estate, which represented the majority of people. See *Ancien Regime*, BRITANNICA, <https://www.britannica.com/event/ancien-regime> (last visited Jan. 9, 2023). All people were subjects of the king, and there was no national citizenship. *Id.*

¹² Doyle, *supra* note 10, at 109.

¹³ See Bauberot, *supra* note 4, at 13.

¹⁴ 1791 CONST. ch. II, art. 3, 4 (Fr.).

¹⁵ See *infra* notes 16–21.

¹⁶ *Concordat of 1801*, BRITANNICA, <https://www.britannica.com/event/Concordat-of-1801> (last visited Aug. 8, 2023).

¹⁷ Chadwick, *supra* note 6.

brought into the system of regulation.¹⁸ Under this new system, the state took over the nomination of bishops and the Church was removed from sectors of society where it had previously been dominant, like education.¹⁹ Although the Concordat ended the divide between the French state and the Catholic Church caused by the Revolution, the Church was allowed back into French public life in a diminished and tightly controlled capacity.²⁰ Under the Concordat, the religious orders, which had been abolished and had their property seized in 1792, were slowly allowed to return, although most male religious orders remained unrecognized by the state and not permitted to resume their role in education.²¹

Following the abdication of Napoleon, the Bourbon monarchs were restored to the French throne from 1814 to 1830,²² which created new hostilities between the Catholic Church and the state.²³ During this period, the Church supported the Bourbon monarchists in their attempts to establish an absolutist monarchy in the spirit of the *Ancien Regime*.²⁴ This led to increased mistrust and hostility towards the Church due to its support of forces that opposed the ideals of the Revolution.²⁵ This conflict of interests reversed the marginal gains the Church saw under the Concordat regime with a series of laws that further limited its presence in France.²⁶ From 1870 on, the government attempted to remove the anti-revolutionary force of Catholicism from French society, with a particular focus on the realm of education.²⁷

From the beginning of the Revolution, state education had been identified as the most important and impactful realm for the transmission of the new secular ethos.²⁸ This made removing the Church from education of paramount importance for establishing the supremacy of the state.²⁹ A law passed on March 28, 1882 replaced the traditional “moral and religious education” with “moral

¹⁸ See Bauberot, *supra* note 4, at 13.

¹⁹ See *id.* at 13–14.

²⁰ See Doyle, *supra* note 10, at 112.

²¹ See *id.* at 110.

²² See *Bourbon Restoration*, BRITANNICA, <https://www.britannica.com/event/Bourbon-Restoration> (last visited Oct. 8, 2022).

²³ Doyle, *supra* note 10, at 110.

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Michael Kelly, *Religion, Politics, and Culture in France*, in *THE CAMBRIDGE COMPANION TO MODERN FRENCH CULTURE* 165, 166 (Nicholas Hewitt ed., 2003).

²⁷ See Chadwick, *supra* note 6, at 1–2; see also Alessandro Ferrari, *The Problem of Civic Cohesion and the Role of the State School in France and Italy: Historical, Religious, and Secular Comparisons*, 35 *J. MORAL EDUC.* 533, 535 (2006).

²⁸ See Doyle, *supra* note 10, at 109.

²⁹ *Id.*; Ferrari, *supra* note 27, at 535.

and civic education,” and mandated that only lay teachers were allowed in public schools.³⁰ A circular published by Jules Ferry, then the Minister of Public Instruction,³¹ asked that no religious symbols be displayed in new or renovated schools.³² The removal of the Church from the realm of education became essential in the project of dismantling the French Catholic Church as part of the destruction of the *Ancien Regime*.³³ The public school in France became the instrument of imparting a secular ethos to children, with the goal of “liberating” children from religious or cultural identities or associations and instead imbuing them with French identity.³⁴ Pope Leo XIII (r. 1878-1903) attempted to heal the rift between the state and the French Church caused by the education laws with his policy of *ralliement*, which encouraged French Catholics to follow a series of directives issued in 1892.³⁵ In contravention of *ralliement*, the French Catholic Church continued to oppose the government and to argue for repeal of the laws that had removed it from its previously dominant role in the sphere of education.³⁶

Whatever conciliatory gains Pope Leo XIII was able to accomplish through *ralliement* were wiped away by the Dreyfus Affair of 1894, which crystallized the animus between the Church and the French state in the early twentieth century.³⁷ Alfred Dreyfus, an Alsatian and Jewish army officer, was convicted of treason for passing military information to Germany.³⁸ The Dreyfus Affair was an explosive social and political event that drove the factions of French society to take sides, ultimately pitting the middle and professional classes, who rallied around Dreyfus and against corrupt institutions, against the Catholic Church, which took the side of the army and institutional authority.³⁹ The Affair deepened the schism between the Church and French society and pushed the

³⁰ Doyle, *supra* note 10, at 116.

³¹ Jules Ferry, THE BRITISH MUSEUM, <https://www.britishmuseum.org/collection/term/BIOG226657> (last visited Oct. 9, 2022).

³² Doyle, *supra* note 10, at 117.

³³ Bauberot, *supra* note 4, at 13 (explaining the role played by the Catholic Church as one of the central forces in pre-Revolutionary France); Doyle, *supra* note 10, at 109.

³⁴ See Ferrari, *supra* note 27, at 535.

³⁵ These directives asked French Catholics to rally to the French government and declared that Catholic political activity should aim to support and strengthen the government, not undermine it. See *Ralliement*, ENCYC., <https://www.encyclopedia.com/religion/encyclopedias-almanacs-transcripts-and-maps/ralliement> (last accessed Oct. 9, 2022).

³⁶ Doyle, *supra* note 10, at 117.

³⁷ MICHAEL KELLY, RELIGION, POLITICS, AND CULTURE IN FRANCE, IN THE CAMBRIDGE COMPANION TO MODERN FRENCH CULTURE 165, 167 (Nicholas Hewitt ed., 2003).

³⁸ *Id.*

³⁹ *Id.*

nation to the point of crisis, which led to seismic shifts in the relationship between the state and the Church in the twentieth century.⁴⁰

The divisions exacerbated by the Dreyfus Affair, combined with the contentious relationship between Pope Pius X (r. 1903-1914) and French Premier Emile Combes,⁴¹ culminated in the passage of the 1905 Law of Separation of Churches and State, which formally established the doctrine of *laïcité*.⁴² In the years preceding the passage of the 1905 law, Combes had aggravated the Church by rigidly interpreting a 1901 law on religious associations to shut down religious schools and forbid religious teaching.⁴³ Pius X refused to recognize bishops appointed by the state, which resulted in the state breaking off relations with the Vatican.⁴⁴ At the same time, a radical parliament came to power and formed a coalition with anti-religion socialists determined to remove the Catholic Church from all influence in politics, leading to the passage of the Law of Separation in 1905.⁴⁵

The law of 1905 remains the defining feature of France's relationship with the Church.⁴⁶ Article 2, the most notable piece of the law, states that “[t]he Republic does not recognize, finance, or subsidize any religious group”⁴⁷ and was intended to clarify the state's relationship with the Catholic Church.⁴⁸ *Laïcité*, the expression of a formally secular state, was the legacy of the Revolutionary ideal of egalitarianism and gave rise to secular institutions that promoted this message.⁴⁹ The Catholic Church responded to the 1905 law with hostility.⁵⁰ In 1906 Pope Pius X condemned the law as “severely dangerous for the dignity of this apostolic seat, for myself, for the clergy and for the entirety of French Catholics.”⁵¹ The Vatican thereafter refused to associate with the French state and diplomatic relations did not resume until 1921.⁵²

⁴⁰ *Id.*

⁴¹ Doyle, *supra* note 10, at 117.

⁴² Kelly, *supra* note 26; Doyle, *supra* note 10, at 118.

⁴³ Doyle, *supra* note 10, at 117.

⁴⁴ *Id.*

⁴⁵ *Id.* at 117–18.

⁴⁶ See Bauberot, *supra* note 4, at 11.

⁴⁷ Law on the Separation of Churches and State of Dec. 9, 1905, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Dec. 11, 1905, p. 7205, art. 2 (“La République ne reconnaît, ne salarie ni ne subventionne aucun culte.”).

⁴⁸ T. Jeremy Gunn, *Religion and Law in France: Secularism, Separation, and State Intervention*, 57 DRAKE L. REV. 949, 955 (2009).

⁴⁹ Cf. Doyle, *supra* note 10, at 108.

⁵⁰ See *id.* at 118.

⁵¹ *Id.*

⁵² *Id.*

The position of the Church in French society shifted again after the liberation of France from Nazi occupation in 1944.⁵³ This period was an apparent softening of the divide in French politics between religion and secularity. The constitution of 1946 identified *laicism* as one of its principles but that did not stop the ruling Christian democratic party from voting for it.⁵⁴ The Vatican II conference announced a new willingness of the Church to accept modern culture and its focus on ideals like individualism, human rights, democracy, and religious freedom.⁵⁵ Vatican II contributed greatly to the emergence of the French Catholic Church as a proponent of *laicism* in the late twentieth century, although the Church was generally significantly weakened.⁵⁶ By the time of Vatican II, ten percent of French priests had resigned, Catholic youth movements had lost participation, and both the Catholic political right and left questioned the authority of Church leaders.⁵⁷ The weakened position of the Church prompted it to relax its attitude toward the French state out of necessity.⁵⁸ In 1972, the Church published a document recognizing the political pluralism of adherents and encouraging Catholics to campaign for all political parties, a significant change from previous political eras where the Church had been aligned against the Republic.⁵⁹

Although the late twentieth century saw the Church embrace *laicism* as a means to survive within France, the deep fissures and hostility caused by the Revolution and deepened by subsequent conflicts remained. France's relationship with the Catholic Church from the sixteenth to the twenty-first century can be characterized by two major themes—the centralization of power in the state and the weakening of the influence of religion.⁶⁰ *Laicite*, the enduring legacy of the 1905 law, remains the defining feature of the relationship between the French state and the Catholic Church.⁶¹ This historical hostility and trepidation toward the Church and its political influence colors French attitudes toward religion and informs legislation on religion in contemporary French

⁵³ Denis Pelletier, *How Did Catholicism Shape and Challenge French Laicism*, in RELIGION AND SECULARISM IN FRANCE TODAY 40, 43 (Philippe Portier & Jean-Paul Willaime eds., 2022).

⁵⁴ *Id.* at 43–44.

⁵⁵ *Id.* at 44.

⁵⁶ *Id.* at 45.

⁵⁷ *Id.*

⁵⁸ *See id.*

⁵⁹ *Id.*

⁶⁰ *See supra* notes 4–59 and accompanying text.

⁶¹ *See* Bauberot, *supra* note 4, at 13; Law on the Separation of Churches and State of Dec. 9, 1905, Journal Officiel de la Republique Francaise [J.O.] [Official Gazette of France], Dec. 11, 1905.

society.⁶² The French model of secularism that emerged from the state's conflicts with the Catholic Church is built on the rejection of religion from the public sphere.⁶³ French secularism views religion as a threat to national unity that the state has a responsibility to guard against.⁶⁴

This history is the foundation of France's ongoing struggle with religion in the public sphere, particularly as it is forced to apply its religious freedom laws, which are fundamentally a response to Catholicism, to other religions like Islam. France's recent laws on religion indicate that Islam has taken the place of Catholicism as the religious threat to the state.⁶⁵ The legislation is the result of a speech given by French president Emmanuel Macron in response to the terror attacks that have killed more than 200 people in France since 2015, particularly the murder of the teacher Samuel Paty in 2020.⁶⁶ The passage of the 2021 Upholding Republican Values bill strengthened prohibitions on polygamy, outlawed the issuance of virginity certificates for girls, and increased scrutiny of religious associations.⁶⁷ The French Prime Minister described the legislation as "a law of emancipation against religious fundamentalism," although the legislation itself does not specifically mention Islam or radicalism.⁶⁸ The connection between the bill and Islam was made more clear by the French Interior Minister, who drew criticism for equating basic religious practices like fasting, praying, and growing a beard with "signs of radicalization."⁶⁹ It appears that the state has replaced the threat of the Catholic Church with the threat of

⁶² See OFF. INT'L RELIGIOUS FREEDOM, FRANCE 2022 INTERNATIONAL RELIGIOUS FREEDOM REPORT, <https://www.state.gov/wp-content/uploads/2023/05/441219-FRANCE-2022-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>.

⁶³ See generally Bauberot, *supra* note 4, at 13 ("The Revolutionaries strove towards the emancipation of civil and political society from the influence of the church, particularly in social matters relating to marriage, divorce, and education.").

⁶⁴ Bernard Stasi, *The Stasi Report*, in THE STASI REPORT: THE REPORT OF THE COMMITTEE OF REFLECTION ON THE APPLICATION OF THE PRINCIPLE OF SECULARITY IN THE REPUBLIC 8, 17 (Robert O'Brien ed., 2005).

⁶⁵ See, e.g., FRANCE 2022 INTERNATIONAL RELIGIOUS FREEDOM REPORT, *supra* note 62 (describing the 2021 Upholding Republican Values bill passed in France and noting "while the law [did] not specifically mention Islam, critics stated the law targeted and stigmatized Muslims . . .").

⁶⁶ Roger Cohen, *France Takes on Islamist Extremism With New Bill*, N.Y. TIMES (Dec. 9, 2020), <https://www.nytimes.com/2020/12/09/world/europe/france-islamist-extremism-bill.html>; Adam Nossiter, *Man Beheads Teacher on the Street in France and Is Killed by Police*, N.Y. TIMES (Oct. 16, 2020), <https://www.nytimes.com/2020/10/16/world/europe/france-decapitate-beheading.html>.

⁶⁷ Ludovic Marin, *The French Brief—Reinforcing the Principles of the Republic: A French Paradox?*, INSTITUT MONTAIGNE (Mar. 10, 2021), <https://www.institutmontaigne.org/en/expressions/french-brief-reinforcing-principles-republic-french-paradox>.

⁶⁸ Cohen, *supra* note 66.

⁶⁹ Myriam Francois, *France's Treatment of Its Muslim Citizens Is the True Measure of Its Republican Values*, TIME (Dec. 8, 2020, 7:00 AM), <https://time.com/5918657/frances-muslim-citizens-republican-values/>.

Islam, and is using the same legal approach to the removal of Islam from public life as it used for the Church.

B. Italy and the Vatican

The defining features of Italy's relationship to the Church are a lack of unified state identity and a strong social bond with Catholicism. Unlike France, Italy was not a single united kingdom with one ruler before the nineteenth century.⁷⁰ Instead, Italy was a patchwork of small kingdoms and city-states, all with their own individual relationships with the Church.⁷¹ The Church was embedded in local communities and had regionally specific relationships with the population.⁷² The Church enjoyed broad public support from the population, which made it a useful tool for rulers, especially as the Italian state began to form through unification in the 1800s.⁷³ The early Italian state used Catholicism as a powerful tool for the creation of social cohesion and a national identity, meaning that the state could not reject religion or the Church to gain power.⁷⁴ This bond with Catholicism and mutual reliance between the Italian state and the Catholic Church are reflected in Italy's positive view of religion in the public sphere.

Like in France, the Catholic Church was deeply embedded in Italian society in the period before the Enlightenment in the late seventeenth and eighteenth centuries.⁷⁵ The first major changes in the position of the Church on the Italian peninsula occurred from 1750 to 1770, when Enlightenment ideas came into conflict with the Church and resulted in ecclesiastical reform in several Italian city-states.⁷⁶ In the regions of Lombardy and Tuscany, there is some evidence that the enlightenment ideals of the French Revolution had an effect on local rulers.⁷⁷ In those territories, leaders made efforts to reduce the power of the Church through property seizures, doing away with monastic orders, and weakening papal control over the local Church presence.⁷⁸ The Revolutionary

⁷⁰ DOMENICO SELLA, *ITALY IN THE SEVENTEENTH CENTURY* 1–2 (1997).

⁷¹ *Id.*; see JOHN POLLARD, *CATHOLICISM IN MODERN ITALY* 7 (Hugh McLeod ed., 2008).

⁷² POLLARD, *supra* note 71, at 25.

⁷³ *See id.* at 7.

⁷⁴ *See id.* at 28.

⁷⁵ *Id.* at 7 (“It was also deeply embedded in civil society, since its laws governed so much of the life of the people, marriage, education, and the provision of medical care and poor relief etc., a sort of ‘cradle to grave’ material and spiritual welfare state.”). See Brian Duignan, *Enlightenment*, BRITANNICA, <https://www.britannica.com/event/Enlightenment-European-history> (last visited Oct. 10, 2022).

⁷⁶ POLLARD, *supra* note 71, at 7.

⁷⁷ *Id.*

⁷⁸ *Id.*

influence was followed by the Revolutionary invasion of Napoleon in the 1790s and the near destruction of the papacy in Italy.⁷⁹ During the first French occupation, the Revolutionaries seized and sold church lands and abolished monastic houses, although these measures met with popular resistance from the devout Italian peasantry.⁸⁰ The second French occupation of 1800–1815 introduced Napoleon’s Concordat of 1801 to the peninsula, under which the sale of church lands was formalized, and the French state took over the appointment of bishops.⁸¹ During the Restoration period following the withdrawal of French forces from Italy in 1815, the rulers of the Italian states did not want to cede back their newfound control over the Church and generally retained a tight grip on administrative control over the local churches and church property.⁸² However, the Catholic Church regained its sovereign control over the central Italian Papal States, where the Church and the state were one and the same.⁸³

The French Revolution’s ingress into Italy left behind its ideals of liberalism and nationalism.⁸⁴ In the years between the Napoleonic withdrawal and Italian unification, various movements were made toward freedom of religion, secularization of education, and greater state control over the Church.⁸⁵ This trend continued during the process of unification from 1850–1861, during which time the Church increasingly lost control across a more unified Italy.⁸⁶ Pope Pius IX (r. 1846–1878) sought aid from the French emperor Napoleon III during the unification period to avoid losing papal sovereign territory to the new Kingdom of Italy, but the intervention of Austria and Great Britain to restrain the emperor resulted in the reduction of papal territory to Rome and the surrounding areas.⁸⁷ Although the Italian nationalists sought to reduce the power of the Catholic Church in order to achieve a united nation-state, they did not reject Catholicism or attempt to replace its role in society with a secular ethos because Catholicism was so deeply embedded in local culture.⁸⁸

⁷⁹ *Id.* at 8.

⁸⁰ *Id.*

⁸¹ *Id.* at 8–9.

⁸² *Id.* at 14–15.

⁸³ *Id.* at 15.

⁸⁴ *See id.* at 8–9 (describing the ecclesiastical reforms put in place by Napoleon after the second French invasion in 1800). The impact of these reforms is seen in the efforts of the Italian reformers after the French withdrawal. *See id.*

⁸⁵ *Id.* at 17; Pius IX, BRITANNICA, <https://www.britannica.com/biography/Pius-IX> (last visited Aug. 26, 2023).

⁸⁶ *See POLLARD, supra* 71, at 24.

⁸⁷ *Id.* at 23–24; *Siege of Rome*, BRITANNICA, <https://www.britannica.com/event/Siege-of-Rome-1849> (last visited Aug. 26, 2023).

⁸⁸ *See POLLARD, supra* 71, at 25.

For national unification to succeed, the nationalists needed to take Rome and triumph over the Papal States.⁸⁹ Once again, the Italian situation was affected heavily by affairs in France.⁹⁰ The outbreak of the Franco-Prussian War in 1870 required Napoleon III to withdraw his troops from Rome, where he had been assisting the Pope, which allowed the Italian government to seize the city in 1871.⁹¹ The fall of Rome and the Papal States ended the previous system, under which the Catholic Church had individual relationships with each Italian state and sovereign power over its own state.⁹² Although unification was a loss for the Catholic Church in many ways, and Pope Pius IX would continue to fight for a return of his territorial power, state unification also laid the foundation for the emergence of a unified national Church.⁹³ Italian unification required the subjugation of the Church's temporal power, but it was not a rejection of Catholicism as a social force. Catholicism remained a major part of Italian life and a key source of social cohesion that the nationalists could not afford to threaten.⁹⁴

The position of liberal Catholics remained complicated following unification, largely due to Pius IX's intransigence and his directive that Italian Catholics not participate in politics of the unified state.⁹⁵ Despite this, the period between the seizure of Rome and the beginning of World War I was a period of revival for the Catholic Church and Italian Catholicism.⁹⁶ The lack of a hard break with the Church during unification allowed the papacy to promote Catholicism following unification. After 1861, the Vatican undertook a press campaign by purchasing popular newspapers and invested in local Catholic organizations to promote the Vatican's policies.⁹⁷ The opposition of Pius IX to unification, although not successful in winning back sovereign territory, did have the effect of strengthening central control within the Vatican.⁹⁸ At the end of the nineteenth century, Catholicism remained as one of the only common

⁸⁹ Simone C. Martino, *Politics and Religion in Italy: A Catholic History*, 2 Прегледни рад [POL. AND REL. J.] 233, 238 (2015) (Serbia).

⁹⁰ See POLLARD, *supra* note 71, at 27.

⁹¹ *Id.*

⁹² See *id.* at 28.

⁹³ *Id.*

⁹⁴ *Id.* at 27.

⁹⁵ Martino, *supra* note 89, at 238.

⁹⁶ POLLARD, *supra* note 71, at 29.

⁹⁷ *Id.* at 35.

⁹⁸ *Id.* at 38–39.

elements of identity on a peninsula regionally divided by language, politics, and economic situations.⁹⁹

The events of World War I brought the Catholic Church and Italian state further into alignment.¹⁰⁰ During the war, the pope rallied bishops and clergy to boost national morale and support for the purchase of war bonds, and the Vatican contributed several million lire of its own money to the war effort.¹⁰¹ This, combined with the mobilization of the Italian Catholic population in the war, cemented the Church's status as a national institution and part of the establishment along with the government.¹⁰² The first World War demonstrated again the nature of Catholicism as a major binding force for a society that otherwise lacked a unifying culture and social cohesion.¹⁰³ The rise of Mussolini in 1922 brought further benefits to the Church through the strengthening of its position in Italy, including an increase in the stipends of priests, re-introduction of religious education to public schools, and a government intervention to save the Vatican's bank.¹⁰⁴ The Italian state and the papacy reached an agreement with the Lateran Pacts of 1929, in which the Vatican agreed to lend its support to the regime and stop backing political parties that opposed fascism in exchange for economic and legal concessions.¹⁰⁵ The Pacts established the Vatican as a sovereign state and established the relationship between the Church and the state that would allow Catholicism to strengthen its presence throughout the rest of the twentieth century.¹⁰⁶

Pope Pius XI (r. 1922-1939) undertook a program of Catholic Action under the fascist regime to strengthen the culture of Catholicism in Italy and ensure that the Church would survive the eventual fall of fascism.¹⁰⁷ Pius improved the education of priests, expanded the Catholic youth organizations, and invested in organizations to provide spiritual services for the working class.¹⁰⁸ The hardline cultural beliefs of fascism also boosted the Church's policies on marriage, the

⁹⁹ *Id.* at 39; Martino, *supra* note 89, at 234.

¹⁰⁰ *See infra* notes 101–06 and accompanying text.

¹⁰¹ POLLARD, *supra* note 71, at 72.

¹⁰² *Id.* at 74.

¹⁰³ Alessandro Ferrari, *Civil Religion in Italy: A Mission Impossible*, 41 GEO. WASH. INT'L. L. REV. 839, 842 (2010).

¹⁰⁴ POLLARD, *supra* note 71, at 83.

¹⁰⁵ Martino, *supra* note 89, at 238.

¹⁰⁶ *See* POLLARD, *supra* note 71, at 87.

¹⁰⁷ *Id.* at 95; Pius XI, BRITANNICA, <https://www.britannica.com/biography/Pius-XI> (last visited Aug. 30, 2023).

¹⁰⁸ *Id.* at 96.

role of women, contraception, abortion, and various issues of morality.¹⁰⁹ The marriage of convenience between the state and the Church continued into World War II, when Mussolini leaned heavily on the cultural and social influence of the Church to maintain support for the war despite Italian ambivalence toward Germany, a historical enemy.¹¹⁰ Party propaganda did not have the cache that priests and religion did, and as the fascist regime declined during the war, the position of the Church strengthened.¹¹¹ After the fall of Mussolini, the Vatican worked as an intermediary between Italy and the Allies, and the Church staked out a diplomatic role for itself in relations with the various forces occupying the peninsula, including the Allies, the lingering fascist party, and remaining German occupiers.¹¹² The Catholic population was generally supportive of resistance movements in the Axis-held north, including rural clergy, and the Vatican was involved in the sheltering of Allied prisoners of war, anti-fascists, and Jews in Rome.¹¹³ This support of the resistance allowed the Church to absolve itself of cooperation with fascism, further solidify perception of Catholicism as patriotic, and strengthen Catholic political parties in the post-war years.¹¹⁴

During the last years of World War II and in the decade that followed, the Catholic Church benefited from the fractured nature of the Italian peninsula.¹¹⁵ Following the fall of fascism in 1943, the Italian state only had control of the territory below the front lines and had little diplomatic ability, leaving the Vatican in a powerful position.¹¹⁶ The monarchy was abolished in 1946 by popular vote, organized political parties were few, and the Vatican had stepped into an influential role in diplomacy with the U.S., which was eager to prevent fascism or communism from taking hold in Italy.¹¹⁷ The general elections of 1948, in which the full force of Catholic Action was marshaled to defeat the Socialist and Communist parties, ushered in the rule of the Christian Democrats, a Catholic political party that remained in power until 1994.¹¹⁸ The formal acknowledgment of the Lateran Pacts in the Constitution of 1948 effectively negated the other provisions in the constitution for separation of church and state

¹⁰⁹ *Id.* at 98.

¹¹⁰ *Id.* at 105.

¹¹¹ *Id.*

¹¹² *Id.* at 106.

¹¹³ *Id.*

¹¹⁴ *Id.* at 107.

¹¹⁵ *See id.* at 109.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 117.

by identifying Catholicism as the only state religion.¹¹⁹ This resulted in a body of case law handed down in the 1950s and 1960s that interpreted the constitutional acknowledgment of the Pacts as confirmation that Catholicism was the religion of the state, and protection of Catholicism, therefore, had precedence over other religions.¹²⁰ This is also reflected in the definition of *laicità*, which has only been defined by the Constitutional Court as “not the state’s indifference towards religion, but the state’s guarantee to safeguard religious freedom in a regime of denominational and cultural pluralism.”¹²¹ The body of law that emerged after World War II reflects the special place of the Catholic Church in politics and culture and makes no secret of the favored place of Catholicism.¹²² Italian *laicità* is a product of the closely entwined, at times nearly completely merged, relationship of the Italian state and the Church.¹²³

C. *The Resulting Divergent Views on Religion in France and Italy*

The historical and contemporary relationships of France and Italy with the Catholic Church are essential in understanding the way the two states approach the regulation of religion in public life. The post-Revolution French state created a firm divide between the Catholic Church and the state, followed by years of conflicts in which the state continually sought to subordinate or entirely remove the Church and religion from various areas of public life.¹²⁴ As one of the primary institutions of the *Ancien Regime*, the Church was associated with the social division and corruption of that era.¹²⁵ In order to accomplish the removal of the Church as a powerful institution in French life, France developed a rigid stance toward religion in society and sought to replace religion’s place in culture and society with a secular ethos and French identity.¹²⁶ The division between Church and state in France was characterized by hostility toward the Church and a belief that the Church’s presence in public life was threatening to the nation and its citizens.¹²⁷ The nation also carried the memory of the religious wars of

¹¹⁹ *Id.* The provision of the Pacts that identified Catholicism as the only state religion was removed in 1989. See *Lautsi v. Italy*, App. No. 30814/06, Eur. Ct. H.R. ¶ 23 (Mar. 18, 2011), <https://hudoc.echr.coe.int/eng?i=001-104040>.

¹²⁰ POLLARD, *supra* note 71, at 118.

¹²¹ Ferrari, *supra* note 103, at 849.

¹²² *See id.* at 850.

¹²³ *Id.* at 849.

¹²⁴ *See supra* Part I.A.

¹²⁵ Doyle, *supra* note 10, at 109.

¹²⁶ Pelletier, *supra* note 53, at 40.

¹²⁷ *See supra* notes 25–33 and accompanying text.

the sixteenth century and the persecution of religious minorities, and religion carried the stain of association with the recently deposed king.¹²⁸

Although Italy's relationship with the Catholic Church is similarly marked by conflict and a long power struggle between the state and the Church, Italy's history reveals a mutual dependence between the state and the Church that is not seen with France.¹²⁹ The lack of regional unity and social cohesion in Italy, combined with the relative weakness of Italy's institutions, necessitated an alliance with Catholicism as the glue that bound Italian society.¹³⁰ The state was reliant on Catholicism to create social cohesion, a role that in France is filled by a sense of national patriotism and identification with the state.¹³¹ Even after the Kingdom of Italy took Rome from the papacy in 1871, there was no definitive break with the Catholic Church and no enforced separation between the state and Catholicism.¹³² Italy's history of flexibility and willingness to work with the Church is reflected in its current relationship with religion, which is also markedly different from that of France.¹³³ Italy's approach to religion in public space is generally positive, rather than hostile.¹³⁴ Despite the fact that the majority of the population in both states remains Catholic,¹³⁵ the historical relationship with the Catholic Church in each has led to almost opposite treatment of religion in public space—one anti-religion and one pro-religion.¹³⁶

Despite a similar and, at times, shared history with the Catholic Church, France and Italy developed drastically different versions of secularism and views on the inherent nature of religious symbols.¹³⁷ These divergent views have significant impact on the way each state regulates the presence of religious symbols in public education.¹³⁸ French secularism requires the removal of religious symbols to maintain neutrality in public spaces and protect individuals

¹²⁸ Bauberot, *supra* note 4, at 12–13.

¹²⁹ *Compare* Part II.A, with Part II.B.

¹³⁰ Ferrari, *supra* note 103, at 843–44.

¹³¹ *Id.* at 843.

¹³² *See* POLLARD, *supra* note 71, at 27.

¹³³ *See supra* Part II.B.

¹³⁴ *See infra* notes 203–05.

¹³⁵ In a 2007 poll, fifty-one percent of French citizens identified as Catholic. Pelletier, *supra* note 53, at 47. A 2016 study reported that seventy-one percent of Italians identify as Catholic. Nicole Pedrazzi, *L'italia e le religioni nel 2016*, RIFORMA.IT (Feb. 1, 2016), <https://riforma.it/it/articolo/2016/02/01/litalia-e-le-religioni-nel-2016>.

¹³⁶ *See infra* Part II.C.

¹³⁷ *Compare* notes 247–48, with notes 298–304.

¹³⁸ *Id.*

from religion.¹³⁹ Italy sees the values of Christianity as compatible with secularism, which allows for religion to exist in public spaces without conflict.¹⁴⁰ For both states, public education is a realm of great importance for the continuation of national culture and integration of students from different religious and cultural backgrounds.¹⁴¹ The definition of French secularism as a rejection of religion and the perception of religious symbols as inherently negative creates a legal approach with little room for flexibility. Italy's blending of religion and secularism and positive view of religious symbols means less regulation but also makes Catholicism inescapable in public education, which may be marginalizing to some students.

II. THE LEGAL APPROACH TO RELIGIOUS SYMBOLS IN PUBLIC EDUCATION

The following discussion of *Lautsi v. Italy* and *Dogru v. France*, both involving the struggle over display of religious symbols in schools, demonstrates the lasting effects of the unique relationships the states have with the Catholic Church and how this history has shaped the approach to religion in the public sphere. Public education is an especially illuminating area for the examination of these differences because both states treat it as one of the central tools in creating and maintaining national values and identity.¹⁴²

The removal of the Church from French education was one of the biggest sources of animus between the French state and the papacy in the nineteenth century.¹⁴³ The presence of religious symbols, such as crosses, Islamic headscarves, and yarmulkas, has been a source of serious contention and legal discussion in France since the 1980s.¹⁴⁴ As *Dogru* demonstrates, these laws are designed to remove symbols of non-Christian religions, particularly those of Muslims and Sikhs, whose religions involve outward manifestations of faith.¹⁴⁵ The Stasi Report, the product of a commission tasked with examining the role of secularism in modern France, demonstrates that the French model of secularism results in a view of religious symbols and those who wear them as inherently threatening to the state's goals for public education, like imparting

¹³⁹ See *infra* notes 247–48 and accompanying text.

¹⁴⁰ See *infra* notes 298–304 and accompanying text.

¹⁴¹ See *infra* notes 196, 264 and accompanying text.

¹⁴² See *infra* notes 196, 310 and accompanying text.

¹⁴³ See *supra* Part I.A.

¹⁴⁴ Susanna Mancini, *The Power of Symbols and Symbols as Power: Secularism and Religion as Guarantors of Cultural Convergence*, 30 CARDOZO L. REV. 2629, 2644, 2646 (2009).

¹⁴⁵ Lucy Vickers, *Religious Freedom: Expressing Religion, Attire, and Public Spaces*, 22 J.L. & POL'Y 591, 600 (2014).

the secular ethos.¹⁴⁶ In attempting to remove the perceived threat of religious symbols from public schools, the French state has employed a rigid framework designed to address the power of the Catholic Church.¹⁴⁷ As Part III will argue, this approach might succeed in the total rejection and removal of religion, but it is not equipped to achieve the goals of integration, transmission of national values, and the promotion of national unity.

The relationship between the Church and the Italian state as played out in public educational spaces is markedly different. In Italy, as in France, public education was traditionally the domain of clergy, and the classroom is recognized as the place where the imparting of essential values occurs.¹⁴⁸ Italy did not take over elementary education from the Church until 1911, twenty-two years later than France, as a result of anxieties around unstable unification.¹⁴⁹ During the late nineteenth century, when unification was new and fragile, the state could not afford to wage war with the Church on the front of public education, so schools became an area of compromise.¹⁵⁰ As seen in *Lautsi*, the school is the place where Catholicism as a national value is imparted to children, which is essential for the creation of an Italian identity.¹⁵¹ To that end, the display of a crucifix in all classrooms in Italian public schools was required by law at least as early as 1860 by royal decree no. 4336, which mandated that “each school must without fail be equipped with . . . a crucifix.”¹⁵²

Section A will examine *Lautsi* and how it is indicative of a model of secularism that sees religion as communicative of positive values. Section B will discuss *Dogru v. France* and the French conception of religious symbols as inherently threatening to the state. Section C’s comparison of the two cases will demonstrate the ways that Italy’s historically cooperative and mutually reliant relationship with Catholicism may allow for more flexibility toward all religions in public spaces. Part III will argue that the Italian approach is more conducive

¹⁴⁶ *Infra* note 221.

¹⁴⁷ *See infra* notes 320–25.

¹⁴⁸ Ferrari, *supra* note 27, at 533.

¹⁴⁹ *Id.* at 534.

¹⁵⁰ *Id.* at 536–37.

¹⁵¹ *Lautsi v. Italy*, App. No. 30814/06, Eur. Ct. H.R. ¶ 16 (Mar. 18, 2011), <https://hudoc.echr.coe.int/eng/?i=001-104040>.

¹⁵² *Id.* ¶ 17. A September 9, 2021, ruling of the Italian Supreme Court made the display optional based on the decision of the school director and the opinion of students. *See* Cass., settembre 2021, n. 24414/2021 (It.), <https://www.lawpluralism.unimib.it/en/oggetti/818-italian-court-of-cassation-joined-chambers-corte-di-cassazione-no-24414-2021-9-september-2021>; *see* Francesco Alicino, *Ceci n’est pas une pipe: The Crucifix in Italian Schools in the Light of the Recent Jurisprudence*, CANOPY F. ON THE INTERACTIONS OF L. & RELIGION (Nov. 30, 2021).

to the achievement of the goals for public education because it allows students to freely participate in the space where transmission of cultural values occurs. France's approach, as a product of the battle with the Catholic Church, is too rigid in its demand of the removal of religion, and results in more harm to students of already marginalized backgrounds by mandating that they either remove a marker of their religious and cultural identity or leave school.

A. *Lautsi v. Italy and the Italian View of Religious Symbols as Communicative of Positive Values*

In *Lautsi*, the parents of two boys who attended a state school challenged the display of crucifixes in classrooms and asked the governors of the school to consider removing them.¹⁵³ In 2002, the governors of the school voted ten to two, with one abstaining, to keep religious symbols in the classrooms.¹⁵⁴ The mother of the boys (the "Applicant") brought the case to the Veneto Administrative Court and argued that the presence of crucifixes in the classroom was a violation of the right to equality and religious freedom under Articles 3¹⁵⁵ and 19¹⁵⁶ of the Italian Constitution, a violation of religious freedom under Article 9 of the European Convention on Human Rights,¹⁵⁷ and a violation of the "principle of impartiality of public administrative authorities" under Article 97¹⁵⁸ of the Italian Constitution.¹⁵⁹ In response, the Minister of Education, Universities and Research instructed the Ministry to ensure that crucifixes

¹⁵³ *Lautsi*, App. No. 30814/06 ¶ 11.

¹⁵⁴ *Id.*

¹⁵⁵ Art. 3 Costituzione [Constitution of the Italian Republic.] (It.), https://www.quirinale.it/allegati_statici/costituzione/costituzione_inglese.pdf ("All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country.").

¹⁵⁶ *Id.* art. 19 ("Anyone is entitled to freely profess their religious belief in any form, individually or with others, and to promote them and celebrate rites in public or in private, provided they are not offensive to public morality.").

¹⁵⁷ Convention for the Protection of Human Rights and Fundamental Freedoms, art. 9, Nov. 4, 1950, Europ. T.S. No. 5; 213 U.N.T.S. 221, https://www.echr.coe.int/documents/convention_eng.pdf ("Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.").

¹⁵⁸ Art. 97 Costituzione [Constitution of the Italian Republic.] (It.), https://www.quirinale.it/allegati_statici/costituzione/costituzione_inglese.pdf ("Public offices are organised according to the provisions of law, so as to ensure the efficiency and impartiality of administration.").

¹⁵⁹ *Lautsi*, App. No. 30814/06 ¶ 12.

remained in classrooms.¹⁶⁰ In 2004, the Administrative Court referred the case to the Constitutional Court to rule on constitutionality, in particular, whether the presence of the crucifix violated the requirement of state secularity.¹⁶¹ The Constitutional Court ruled that the question of constitutionality was inadmissible, and the Administrative Court dismissed the case in 2005, holding that the presence of crucifixes in public classrooms did not conflict with the principle of secularity.¹⁶²

The Applicant appealed to the Supreme Administrative Court, which affirmed that the display of the crucifix was required by law and compatible with the principle of secularism, finding that the crucifix “symbolised the religious origin of values . . . which characterised Italian civilisation.”¹⁶³ The case was then taken to the European Court of Human Rights, where the Chamber held that there had been a violation of Article 2 of Protocol 1, the right to education, and Article 9 of the Convention.¹⁶⁴ In reaching its decision regarding Article 2, the Chamber cited the principle established by case law that there is a state obligation to avoid “imposing beliefs, even indirectly, in places where persons were dependent on [the state] or in places where they were particularly vulnerable,” which included public schools.¹⁶⁵ The Chamber held that the state “had a duty to uphold confessional neutrality in public education,” and that the symbol of the majority religion in Italy had no purpose in “educational pluralism.”¹⁶⁶ The Grand Chamber considered only the question of a violation under Article 2 of Protocol 1 and Article 9.¹⁶⁷ In a reversal of the Chamber’s decision, the court found that a crucifix was “an essentially passive symbol” and could not be seen as having significant influence on students.¹⁶⁸

The March 17, 2005 holding of the Italian Administrative Court that the presence of the crucifix in state schools did not violate “the principle of the secular nature of the State” contains a wealth of information regarding the Italian

¹⁶⁰ *Id.* ¶ 13.

¹⁶¹ *Id.* ¶ 14. The articles at question were Articles 2, 3, 7, 8, 19 and 20. *Id.*

¹⁶² *Id.* ¶ 14–15.

¹⁶³ *Id.* ¶ 16.

¹⁶⁴ *Id.* ¶ 30. “No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.” Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol Nos. 11 and 14, art. 2, May 3, 1952, *Europ. T.S. No. 5*; 213 U.N.T.S. 221.

¹⁶⁵ *Lautsi*, App. No. 30814/06 ¶ 31.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* ¶ 57.

¹⁶⁸ *Id.* ¶ 72.

view of religious symbols and is particularly revealing of the overlap between Catholicism and Italian state identity.¹⁶⁹ The Administrative Court argued that that crucifix was not only a symbol of Catholicism, but of Christianity in general, and a “historical and cultural symbol.”¹⁷⁰ The opinion of the court links Christianity with the modern Italian state’s values and makes a strong argument for the positive role of religion in modern Italian life. The opinion’s extensive references to the historical role of religion as a foundation of secularism reflect the Italian understanding of secularism as inclusive of religion.¹⁷¹

The creation of the modern Italian state was largely a story of mutual reliance between the Italian state and the Catholic Church.¹⁷² Catholicism and its values are thus deeply embedded in Italian society.¹⁷³ The opinion of the Administrative Court demonstrates the importance of Catholicism to the Italian people and the role played by Catholicism in the creation of the modern Italian state.¹⁷⁴ The opinion draws a link between the birth of Christianity and the beliefs of the Enlightenment, specifically “the liberty and freedom of every person, the declaration of the rights of man, and ultimately the modern secular State.”¹⁷⁵ The court goes on to argue that the modern secular state is a product of “a more or less conscious reference to the founding values of Christianity.”¹⁷⁶ The court acknowledges that the attempt to link Christianity and the modern values of the secular state is a difficult task but makes the case that there is a “central core of Christian faith” that encapsulates the values of “human dignity, tolerance and freedom,” which are the basis of the secular state.¹⁷⁷ The Administrative Court sees the secular state not as a rejection of the role of religion in society but as a product of the influence of Christianity in Europe, an influence which the court sees as largely positive.¹⁷⁸

The court uses this historical link between Christianity and European values to position the crucifix as a cultural and historical symbol, a symbol of Italian identity, and a symbol of the values of “liberty, equality, humanity dignity and religious toleration,” and as such a representation of the secular state, which is

¹⁶⁹ *Id.* ¶ 15.

¹⁷⁰ *Id.*

¹⁷¹ *See infra* notes 312–16 and accompanying text.

¹⁷² *See supra* Part I.B.

¹⁷³ POLLARD, *supra* note 71, at 6–7.

¹⁷⁴ *Lautsi*, App. No. 30814/06 ¶ 15.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *See id.* (“[W]e can clearly perceive an affinity between . . . the ‘hard core’ of Christianity . . . and the ‘hard core’ of the republican Constitution . . .”).

based on those values.¹⁷⁹ Under the assumption that secularism requires a separation of the church and state, as is found in France, it seems paradoxical to argue that religion is a foundation of the secular state and that religious symbols are, therefore, representative of both religious and secular values. The court's argument on this point demonstrates the way Italy's relationship with religion in public life rejects this assumption.¹⁸⁰ The court contends that the paradox would be in the exclusion of a Christian symbol in support of secularism when "one of [the] distant sources" of secularism is Christianity.¹⁸¹ The Administrative Court's argument on why the inclusion of religious symbols in classrooms does not violate the principle of secularism explicitly links secularism and religion using the historical relationship of the Italian state and Catholicism.¹⁸²

This argument reflects the way Catholicism was baked into the Italian state throughout the process of unification.¹⁸³ For the Italian state, Catholicism was a foundational element of the modern state, and a rejection of its influence would be paradoxical for Italian society.¹⁸⁴ This view was also expressed by the Supreme Administrative Court in its ruling, which argued that while secularism was a "supreme principle" of the constitution,¹⁸⁵ secularism was understood in the context of culture and traditions.¹⁸⁶ Italy's secularism is a catch-all term for the requirements of state neutrality towards religion found in various articles of the constitution.¹⁸⁷ Secularism, as a principle derived from Italy's Christian tradition, has no inherent conflict with religion.¹⁸⁸

The Administrative Court acknowledges that the crucifix could be seen as a state preference for one religion, a violation of the freedom of religion, or "subliminal propaganda."¹⁸⁹ The court even recognizes that the original intent of the statute enacted under King Albert was to enforce Catholicism and

¹⁷⁹ *Id.*

¹⁸⁰ *See infra* notes 181–88 and accompanying text.

¹⁸¹ *Lautsi*, App. No. 30814/06 ¶ 15.

¹⁸² *Id.*

¹⁸³ *See POLLARD*, *supra* note 71, at 24–27.

¹⁸⁴ *See Lautsi*, App. No. 30814/06 ¶ 15.

¹⁸⁵ *Id.* ¶ 16. Secularism is not explicitly stated in the Italian constitution. *Id.* The Constitutional Court cited Articles 2, 3, 7, 8, 19, and 20 as sources for the "fundamental norms" of secularism. *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* ("This is a principle which is not proclaimed in express terms in our Constitution, a principle which is rich with ideological resonances and has a history full of controversy, but one nevertheless which has a legal importance that can be deduced from the fundamental norms of our system. In reality the Court derives this principle specifically from Articles 2, 3, 7, 8, 19 and 20 of the Constitution.")

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* ¶ 15.

“consolidate power and authority.”¹⁹⁰ However, the court disregards these possible points of view on the crucifix as irrelevant.¹⁹¹ The Supreme Administrative Court agreed in its opinion, arguing that in the context of Italy, the crucifix communicated “tolerance, mutual respect, valorisation of the person, affirmation of one’s rights, consideration for one’s freedom, the autonomy of one’s moral conscience . . . human solidarity and the refusal of any form of discrimination.”¹⁹² The Supreme Administrative Court argued that religion was the source of these values, which are central to Italian life and culture.¹⁹³ The Supreme Administrative Court’s opinion emphasizes that in the context of Italian public life, religion is the source of social and cultural values and traditions.¹⁹⁴ The opinion further demonstrates that rather than rejecting religion, the Italian approach to law regarding religion in the public sphere is not only inclusive of religion but is founded on the centrality of religion to public life.¹⁹⁵

The opinions of the Administrative and Supreme Administrative Courts illustrate that public schools are considered one of the arenas in which the values of Italian society are imparted to children. The Administrative Court specifically addresses the attendance of Italian public schools by children from outside the European Union and emphasizes how important it is to use public classrooms to “reaffirm” Italian identity.¹⁹⁶ The Administrative Court emphasized that the crucifix, in combination with the instruction of a teacher, was a means of teaching Italian history and the commonly held values of Italian society, such as inclusion, acceptance, and respect.¹⁹⁷ The Supreme Administrative Court argued that when displayed in the classroom, the crucifix was a tool of education that could be instructive of the foundational values of Italian civil life.¹⁹⁸ The two courts argued for an inclusive secularism that incorporates religion and its values as a way to teach children, especially those from outside Italy, about Italian society.¹⁹⁹ The Administrative Court emphasized the inclusive nature of Christian religious symbols and how the core belief of Christianity is respect for

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.* ¶ 16.

¹⁹³ *Id.*

¹⁹⁴ *Id.* (“Those values, which have pervaded traditions, a way of life, the culture of the Italian people, form the basis for and spring from the fundamental norms of our founding charter . . .”).

¹⁹⁵ *See id.*

¹⁹⁶ *Id.* ¶ 15.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* ¶ 16.

¹⁹⁹ *Id.*

other people.²⁰⁰ With the understanding that the symbol of the crucifix could not be exclusionary to non-Christian students, the Court concluded that displaying the crucifix in the classroom was a means of both avoiding conflict between cultures by communicating inclusivity, and of reaffirming Italian identity by transmitting Italian history and values.²⁰¹ In this framework, the crucifix functions as a method of achieving civic cohesion by inviting students of diverse backgrounds into Italian culture and traditions without excluding their own beliefs.²⁰²

The treatment of the crucifix in public classrooms by the Italian Administrative and Supreme Administrative courts demonstrates the positive view on religious symbols in Italian public spaces.²⁰³ In the public classroom, the crucifix was a positive symbol of Italian social values, constitutional principles, and history.²⁰⁴ It was considered by the courts to be a useful tool in creating social cohesion by imparting these values to schoolchildren, especially those from outside Italy.²⁰⁵ Both courts explicitly argued that religion was deeply embedded in Italian culture and formed the foundation of its values and its model of secularism.²⁰⁶ This reflects the approach the Italian state has taken to Catholicism over the course of its history. Rather than rejecting the power and presence of Catholicism in society, the Italian state has chosen to use the influence of Catholicism to strengthen the state by capitalizing on its unifying values.²⁰⁷ *Lautsi* solidified the place of religion in public classrooms as a tool to create social cohesion.

B. *Dogru v. France, the Stasi Report, and French Secularism as Rejection of Religion*

The public classroom in France has historically been a major zone of conflict between the state and the Catholic Church.²⁰⁸ The state identifies the public school as a key space for the transfer of state values to children, which is

²⁰⁰ *Id.* ¶ 15.

²⁰¹ *Id.* ¶¶ 15–16.

²⁰² Mancini, *supra* note 144, at 2637.

²⁰³ *See supra* notes 191–95 and accompanying text.

²⁰⁴ *See Lautsi*, App. No. 30814/06 ¶ 16.

²⁰⁵ *See id.*

²⁰⁶ *Id.* ¶¶ 15–16.

²⁰⁷ *See* Part I.B.

²⁰⁸ *See supra* Part I.A.

essential for perpetuating French culture, especially secularism.²⁰⁹ The laws passed during the nineteenth century that pushed the Church out of the realm of education were a major factor in the passing of the Law of Separation of Church and State in 1905.²¹⁰ After the French Revolution, public education was identified by the new French state as the most important realm for promoting the supremacy of the state.²¹¹ The struggle over religion in public schools continued into the twentieth century with decades of conflict over the balance between public and private schools, which were almost entirely Catholic.²¹² Since 1989, when the discussion around the place of religious symbols in French public schools began seriously, the discussion has been centered around the threatening force of Islam, rather than Catholicism.²¹³

In 1989, the question of religious symbols in school had largely been considered in case law, which held that a general ban on wearing religious symbols or clothing was illegitimate because it conflicted with the rights of students to manifest their religion.²¹⁴ Under the case law, the practice could only be limited if the symbols were considered provocative, offensive, threatening to public safety, a hindrance to school activities, or proselytism to other students.²¹⁵ This resulted in confusion for teachers, who carried the burden of interpreting what constituted a hindrance to school activities, violative of the rights of other students, and when a symbol was “ostentatious.”²¹⁶ The difference between ostentatious and discrete symbols was not clarified until September 20, 1994, when an act was passed, defining which symbols were always ostentatious and thus always proselytism.²¹⁷ A number of students were expelled as a result of the September 20 act, and the Council of State intervened again to declare that the act was not binding and was just an interpretive guide for teachers.²¹⁸

Much of the conversation around religious symbols in schools was centered on Muslim girls wearing headscarves.²¹⁹ A 1994 mediation committee was

²⁰⁹ *Dogru v. France*, App. No. 27058/05, Eur. Ct. H.R. ¶ 17 (Dec. 4, 2008), <https://hudoc.echr.coe.int/eng?i=001-90039>.

²¹⁰ See *supra* notes 26–27 and accompanying text.

²¹¹ See Doyle, *supra* note 10, at 112.

²¹² Pelletier, *supra* note 53, at 46; Bauberot, *supra* note 4, at 17.

²¹³ See Mancini, *supra* note 144, at 2643–44.

²¹⁴ *Id.*

²¹⁵ *Id.* at 2644.

²¹⁶ *Id.*

²¹⁷ *Id.* at 2644–45; Circulaire No. 1649, Sept. 20, 1994 [Memo 1649 of September 20, 1994], JOURNAL OFFICIEL DE LA RÉPUBLIQUE FRANÇAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Sept. 24, 1994.

²¹⁸ Mancini, *supra* note 144, at 2644–45; CE Sect., July 10, 1995. Rec. Lebon 162718.

²¹⁹ Mancini, *supra* note 144, at 2643.

formed to engage in dialogue with students and convince them not to wear the veil, which was unsuccessful.²²⁰ The increasing tension over what to do about headscarves in schools resulted in the formation of the Stasi Commission in July 2003 with the purpose of studying the principle of secularism and its application in France.²²¹ Regarding the issue of religious symbols and clothing in public schools, the Stasi Report recommended a full ban.²²² This recommendation was codified in the law of 2004 banning the wearing or display of ostentatious religious symbols in public schools.²²³ After the law passed, the Minister of Education issued a clarifying decree explicitly naming which symbols were always considered ostentatious, including the Islamic headscarf, the kippah, or a crucifix of “manifestly exaggerated dimensions.”²²⁴ One of the goals of the ban was to enforce secularism and to prevent coercion of Muslim girls into wearing the headscarf against their wishes.²²⁵ In the first year of the implementation of the ban, thirty-nine students were expelled, forty-seven were excluded from participation in school, and ninety-six voluntarily chose not to return to school, while around a dozen chose to return to school the following year wearing prohibited symbols and were disciplined.²²⁶

Although the 2004 ban on the wearing of conspicuous religious symbols applies to all ostentatious symbols, including large crucifixes, veils, and kippahs, the impetus for the passage of the law was the increasing conflict over Muslim girls wearing headscarves.²²⁷ The Stasi Report’s justifications for the then proposed ban focused on maintaining a calm learning environment free of tension and minimizing disruptions from religious activities like fasting and prayer.²²⁸ The ban on religious symbols in schools has a disproportionate impact on students whose religions involve external manifestations of piety through

²²⁰ *Id.* at 2645.

²²¹ *Id.*

²²² *Id.* at 2645–46.

²²³ Loi 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics [Law 2004–228 of March 15, 2004, Concerning, As an Application of the Principle of the Separation of Church and State, The Wearing of Symbols or Clothing Manifesting Religious Affiliation in Public Primary and Secondary Schools], CODE DE L’ÉDUCATION [C. EDUC.] [EDUCATION CODE], Mar. 15, 2002. art. L161-1, L162-2, L163-1, L164-1, L451-1.

²²⁴ Mancini, *supra* note 144, at 2646.

²²⁵ INT’L CTR. FOR ADVOCS. AGAINST DISCRIMINATION, WHEN DISCRIMINATION MASQUERADES AS EQUALITY: THE IMPACT OF FRANCE’S BAN OF RELIGIOUS ATTIRE IN PUBLIC SCHOOLS 3 (2014).

²²⁶ *Id.* at 4.

²²⁷ Mancini, *supra* note 144, at 2646.

²²⁸ *Id.*

clothing.²²⁹ Moreover, the general concerns identified by the Report such as community withdrawal and the “degradation of the social situation” of women and girls were focused on the behavior of French Muslims.²³⁰

The ban and its impact on Muslim schoolchildren have been controversial.²³¹ The ban has been denounced by human rights groups that believe it furthers prejudice against religious minorities and violates religious freedom protections.²³² France has rejected calls to amend or repeal the law, but there have been discussions within the French government about whether headscarves should be allowed in schools in order to better integrate the Muslim population.²³³ As *Dogru v. France* demonstrates, the exclusion of religious symbols from public schools is a less effective means of transmitting French identity and integrating members of different religions and cultures into French society.²³⁴ The application of France’s strict secularism in the public school setting, born out of opposition to the Catholic Church, disproportionately impacts Muslim students and is ill-suited to achieving the goals of public education.²³⁵

Dogru involves a Muslim girl, aged eleven at the beginning of the case in 1999, who was attending a state secondary school in Flers.²³⁶ Beginning in January 1999, she wore a headscarf to school.²³⁷ In January, her physical education teacher asked her to remove the headscarf seven times because the teacher considered the headscarf to be incompatible with physical education class.²³⁸ On February 11, the school’s disciplinary committee decided to expel the student for refusing to participate in the physical education class.²³⁹ After the girl’s parents appealed the expulsion, the Director of Education for the region upheld the decision on four grounds: (1) the duty of assiduity (attendance and obedience to instructors) as required by the school’s internal rules and Education

²²⁹ Vickers, *supra* note 145, at 600.

²³⁰ Stasi, *supra* note 64, at 43–44.

²³¹ INT’L CTR. FOR ADVOCS. AGAINST DISCRIMINATION, *supra* note 225, at 4.

²³² *Id.*

²³³ See Gérard Bon, *France Should Allow Headscarves, Arabic in Schools: Report to PM*, REUTERS (Dec. 13, 2013, 9:30 AM), <https://www.reuters.com/article/us-france-integration/france-should-allow-headscarves-arabic-in-schools-report-to-pm-idUSBRE9BC0JK20131213>.

²³⁴ See *infra* notes 320–326 and accompanying text.

²³⁵ *Id.*

²³⁶ *Dogru v. France*, App. No. 27058/05, Eur. Ct. H.R. ¶¶ 5–6 (Dec. 4, 2008), <https://hudoc.echr.coe.int/eng?i=001-90039>.

²³⁷ *Id.* ¶ 6.

²³⁸ *Id.* ¶ 7.

²³⁹ *Id.* ¶ 8.

Act of 1989; (2) the school's internal rules stating that pupils must wear clothing that "complies with health and safety rules" and attend physical education classes in sports clothes; (3) a March, 1994 memo giving teachers broad personal discretion to end behavior of students that may present a danger; and (4) the March, 1995 decision of the Council of State that wearing a headscarf at school was an act of religious affiliation that was incompatible with physical education classes.²⁴⁰

The parents appealed again to the region's Administrative Court, which rejected the appeal on October 5, 1999.²⁴¹ The Administrative Court reasoned that the student had chosen not to comply with the duty of attending classes regularly by wearing clothing that did not allow her to take part in the physical education class and that the student's attitude had created tension in the school.²⁴² The Court held that the expulsion of the student was justified.²⁴³ The parents' subsequent appeal to the Nantes Administrative Court of Appeal was also rejected on the same grounds.²⁴⁴ An appeal was filed with the Council of State based on the student's right to freedom of conscience and expression, which the Council of State declared inadmissible.²⁴⁵

Part of the relevant domestic law cited by the Grand Chamber in *Dogru* is the 1989 opinion of the Council of State on the compatibility of religious symbols in schools and secularism.²⁴⁶ The Council argued that secularism in state education, which was a part of the requirement that all public services must be neutral, allowed for the restriction of the right to express and manifest religious belief if that exercise interfered with the activities of public education.²⁴⁷ The Council identified several aspects of the service of public education as at risk for being interfered with by the presence of religion, including the acquisition of culture by students, preparation for professional life and responsibilities as citizens, development of a personality, inculcation of respect for individuals, and "securing and promoting" equality between men and

²⁴⁰ *Id.* ¶ 10. The duty of assiduity is defined in the August 1985 regulations for state schools as an obligation to attend classes, submit to the mode of instruction, and complete assigned work. Decret 85-924 du 30 août 1985 relatif aux établissements publics locaux d'enseignement [Decree 85-924 of August 30, 1985 relating to Local Public Educational Establishments], JOURNAL OFFICIEL DE LA REPUBLIQUE FRANCAISE [J.O.] [OFFICIAL GAZETTE OF FRANCE], Aug. 31, 1985, art. 3-5.

²⁴¹ *Dogru*, App. No. 27058/05 ¶¶ 12-13.

²⁴² *Id.* ¶ 13.

²⁴³ *Id.*

²⁴⁴ *Id.* ¶ 14.

²⁴⁵ *Id.* ¶¶ 15-16.

²⁴⁶ *Id.* ¶ 26.

²⁴⁷ *Id.*

women.²⁴⁸ The argument of the French government in *Dogru* is the product of years of developing thought regarding the nature of the headscarf as an inherently threatening religious symbol.²⁴⁹ In combination with the Stasi Report, the arguments made in *Dogru* exhibit the way the French state's attitude toward religious symbols, as always overt and threatening, is shaped by the state's history of conflict with the Catholic Church.²⁵⁰

In the same manner as the Italian government argued that its national character was shaped by its history as a Catholic nation, the Stasi Report argues that France is shaped by secularism.²⁵¹ The Report begins by linking secularism to ancient Greek thought, the Renaissance, the Reformation, and the Enlightenment.²⁵² It argues that during the twentieth century, secularism became a widely held Republican value that French society rallied behind.²⁵³ The Report acknowledges that the original context of secularism—the conflict with the Catholic Church—no longer applies and that the Church is no longer considered a threat to the Republic.²⁵⁴ However, it argues that this does not invalidate the social and political importance of secularism in contemporary France.²⁵⁵ On the contrary, the Report characterizes secularism as an adaptive value that is capable “of finding balances and of fulfilling the hopes of our society” by accommodating both rationalism and the Judeo-Christian tradition and helping religion to find its place in society.²⁵⁶

The Stasi Report emphasizes that secularism cannot allow any religious tradition that attempts to “dominate . . . the social system or the political order,” because the purpose of secularism is to protect the individual from sectarian pressures and prevent any religious coercion.²⁵⁷ In this vein, the Report presents the protection of the individual against proselytizing as central to the 1905 Law of Separation.²⁵⁸ In contrast to the characterization of secularism as distinct from “militant atheism” and as capable of accommodation of religion in society, the Report focuses heavily on the sacrifices required by religion in the context of

²⁴⁸ *Id.*

²⁴⁹ See Mancini, *supra* note 144, at 2643–45 (discussing the evolution in thinking around and legal treatment of headscarves in French schools).

²⁵⁰ See *infra* notes 270–75 and accompanying text.

²⁵¹ Stasi, *supra* note 64, at 14.

²⁵² *Id.*

²⁵³ *Id.* at 15.

²⁵⁴ *Id.* at 19.

²⁵⁵ *Id.*

²⁵⁶ *Id.* at 16–17.

²⁵⁷ *Id.*

²⁵⁸ *Id.* at 17.

public space and especially public education.²⁵⁹ The citizen must agree to limit public expression of religious identity in order to engage in shared public space.²⁶⁰ The Report's statement that in exchange for protection of the freedom of conscience, the individual must "respect the public space which everyone shares" demonstrates the perception of religious symbols as inherently threatening and disruptive.²⁶¹ In this conception, the presence of the religious symbol in public is disrespectful to others who share the space, and the symbol must be removed in order to achieve cohesion. There is a dissonance in the Report between the attempt to argue that secularism is not a relic of the struggle with the Catholic Church and its application to present circumstances, which consistently characterizes religion as threatening and fundamentally contrary to the values of the state.²⁶²

This tension is especially present in the Report's discussion of public educational spaces and its recommendations for the regulation of religious symbols in that realm.²⁶³ The Report describes public schools as essential to the mission of the Republic of transmitting knowledge; imparting critical thinking, personal autonomy, and openness to diversity; and carrying out the formation of future citizens and professionals.²⁶⁴ In a section weighed down with heavy anti-religious rhetoric, the Report argues that students must have a calm environment in order to study and the state "must oppose their spirits being plagued by the violence and the passions of society."²⁶⁵ The Report argues that the state would fail in its educational mission if it did not remove the dangerous passions of religion from the classroom.²⁶⁶ In addition, even the limited teaching of religion in schools would be for the purpose of arming children with intellectual tools to face the pressures from "politico-religious activists who prosper on the basis of ignorance."²⁶⁷ The characterization of religion in public education demonstrates the assumption that religion and its symbols are always threatening, destabilizing, and hostile to the state.²⁶⁸ The state, in return, must be hostile to

²⁵⁹ *Id.* at 16, 19.

²⁶⁰ *Id.* at 19.

²⁶¹ *Id.*

²⁶² *See infra* notes 264–66 and accompanying text.

²⁶³ *Id.*

²⁶⁴ Stasi, *supra* note 64, at 52.

²⁶⁵ *Id.* at 17–18.

²⁶⁶ *Id.* at 18.

²⁶⁷ *Id.*

²⁶⁸ *See supra* notes 265–66 and accompanying text.

religion in public spaces and particularly in public education because the presence of religion will undermine the essential functions of the state.²⁶⁹

Similar arguments are seen in *Dogru* and in the case law and policy that developed contemporaneously with the progress of the case beginning in 1989. In November 1989, at the request of the Minister of Education, the Council of State issued a ruling on the compatibility of secularism with religious symbols in schools.²⁷⁰ The Council decided that although secularism tolerates the exercise of the freedom to manifest religious beliefs, it does not allow religious symbols that are inherently provocative or proselytizing.²⁷¹ A circular published by the Minister of Education in December 1989 stated that to conform with the principle that public education must be neutral, the educational community must be shielded from “any ideological or religious pressure.”²⁷² The circular proposed the outright ban on students wearing “any conspicuous sign . . . that promotes a religious belief” as a way of avoiding this pressure.²⁷³ Both of these statements equate religious symbols with ideological pressure, coercion, and proselytism and identify the presence of the symbols as a threat to the institution of public education.²⁷⁴ Despite the proposition that secularism is adaptable to the current context and does not require the denial of religion’s place in society, the Stasi Report and the government’s publications approach the educational sphere with the same attitude that shaped the laws that removed the Catholic Church from public education in the late 1800s.²⁷⁵

Dogru demonstrates the French attitude toward religious symbols as inherent threats and demonstrates the harm this approach can have on children from non-Christian backgrounds.²⁷⁶ If religious symbols are always threats to the mission of public education because they constitute ideological pressure that the state is obligated to protect children from, the only recourse becomes total removal of the symbol. Part of the government’s justification for the removal of the student in *Dogru* was the child’s attitude.²⁷⁷ The government argued that the teachers had demonstrated a “conciliatory approach” with the child and “expected a

²⁶⁹ Stasi, *supra* note 64, at 17–18.

²⁷⁰ *Dogru v. France*, App. No. 27058/05, Eur. Ct. H.R. ¶ 26 (Dec. 4, 2008), <https://hudoc.echr.coe.int/eng?i=001-90039>.

²⁷¹ *Id.* ¶ 26.

²⁷² *Id.* ¶ 27.

²⁷³ *Id.*

²⁷⁴ *See id.*

²⁷⁵ *See supra* notes 25–29 and accompanying text.

²⁷⁶ *See Dogru*, App. No. 27058/05 ¶ 27.

²⁷⁷ *Id.* ¶ 39.

gesture” from her in return in the form of the removal of the scarf.²⁷⁸ The regional administrative court found that her attitude had created tension within the school, and the government referred to the negative impact her behavior had on the other students.²⁷⁹ In this argument, the government cited to the case *Dahlab v. Switzerland*, in which the European Court of Human Rights had ruled that Switzerland did not violate a primary school teacher’s rights when she was prohibited from wearing a headscarf while teaching.²⁸⁰ The court in *Dahlab* noted that it was difficult to assess the impact “a powerful external symbol” might have on young children.²⁸¹ Although the court acknowledged that *Dahlab* involved a teacher and children aged between four and eight, the French government used *Dahlab* to demonstrate the negative impact the student’s actions could have on other children because of the proselytizing effect of the religious symbol.²⁸²

The rhetorical treatment of the student in *Dogru* and the arguments made by the French government, as well as the various French courts that considered the case, transfer the attitude toward the religious symbol at issue to the child wearing the symbol. Because the symbol was seen as inherently threatening, proselytizing, and aggressive toward other students and the mission of public education, the student also became a threat to other students and “the normal functioning of the State education service.”²⁸³ The student argued that she had offered to wear a hat or other head covering instead of the scarf but had been refused, and the teacher of her physical education class had not told her why her safety was at risk.²⁸⁴ She also asserted that the unrest in the school was not her fault but the fault of several teachers who had gone on strike to defend secularism.²⁸⁵ The view that religious symbols constitute *per se* threats demands the conclusion that the fault rests with the symbol and, therefore, with the person wearing it. In *Dogru*, the result of this conclusion was not only the removal of the symbol but the permanent removal, through expulsion, of the child who had become synonymous with the threatening and proselytizing nature of the symbol, regardless of the other factors at play.²⁸⁶

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.* ¶ 40.

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ *Id.* ¶¶ 39–40.

²⁸⁴ *Id.* ¶ 44.

²⁸⁵ *Id.*

²⁸⁶ *Id.* ¶ 42.

C. *Two Approaches to Religion in Public Education in the Context of Divergent Paths to Secularism*

Both Italy and France consider public education to be essential for the transmission of national culture and values and the teaching that enables students to successfully join the national community.²⁸⁷ Both states have also emphasized the increased importance of education in the endeavor to integrate students from immigrant communities or minority religions into broader national culture.²⁸⁸ Italy argued in *Lautsi* that the presence of the crucifix in classrooms was a means of reaffirming Italian identity to students from outside of the European Union, and the Stasi Report identified public schools as one of the few places where integration of minority communities reliably occurs.²⁸⁹ The states share the goal of using public education to increase social cohesion, impart national values, and prepare students to join society, with particular emphasis on successfully integrating students from outside of the country.²⁹⁰ The alignment of the two states in the goal of regulating religion in the realm of public education allows for valuable comparison of the effectiveness of the two different approaches.

The two models of secularism that developed from each state's history with the Catholic Church shape the assumptions about the inherent nature of religious symbols, which in turn shape the application of law to religion in public education. In *Lautsi*, the Supreme Administrative Court discussed the harmony between secularism and religion in Italy.²⁹¹ The court acknowledged that the Constitutional Court had confirmed secularism as a "supreme principle" of the constitutional order.²⁹² Secularism, as a principle derived from Italy's Christian tradition, has no inherent conflict with religion.²⁹³ France's secularism is a product of the rejection of religion and is defined by its absence. Where Italy's secularism is a handful of requirements of disparate constitutional articles that together require for the state to be neutral towards religion, France's secularism goes beyond neutrality and requires continued enforcement of the boundaries between religion and public life.²⁹⁴

²⁸⁷ See *supra* notes 196, 264.

²⁸⁸ *Id.*

²⁸⁹ *Lautsi v. Italy*, App. No. 30814/06, Eur. Ct. H.R. ¶ 15 (Mar. 18, 2011), <https://hudoc.echr.coe.int/eng?i=001-104040>; Stasi, *supra* note 64, at 53.

²⁹⁰ *Supra* note 289 and accompanying text.

²⁹¹ *Lautsi*, App. No. 30814/06 ¶ 16.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ See *supra* notes 257–62 and accompanying text.

The Stasi Report summarizes the history of secularism and describes its purpose as protection of the individual from religious pressure and the imposition of “sectarian affiliation.”²⁹⁵ The Report states that the 1905 Law of Separation does not just impose a separation but also seeks to protect the individual conscience from proselytizing, which goes further than simple neutrality.²⁹⁶ French secularism does not have a space within it for religion because it is defined by the removal of religion, while Italian secularism is a product of the influence of the Catholic Church in Italian unification.²⁹⁷ Because of the different ways secularism was born in each state, there is no place for religion within French secularism and inclusion of religion in Italian secularism.

The source of the fundamental difference in the approach to religious symbols in public education is the conception of religious symbols as either inherently negative or inherently positive. Italy supports the presence of Christian religious symbols in the classroom as tools of communicating Italy’s history, national values, and culture.²⁹⁸ In Italy, religious symbols, especially Catholic symbols, are positive. As demonstrated by the Italian government’s defense of the crucifix in *Lautsi*, religious symbols are representative of positive values, even if the religion does not have an entirely positive history.²⁹⁹ In considering the issue of the crucifix in the classroom, the Italian Administrative Court argued that despite the association of the crucifix with historical evils like anti-Semitism, the crusades, and the Inquisition, the core of Christianity that the crucifix represents is “human dignity, tolerance and freedom.”³⁰⁰ The Administrative Court identified a core of Christian belief, which was not tarnished by past struggles between the state and religion or sectarian violence.³⁰¹ This makes the present-day crucifix a symbol of the pure, unsullied core of Christian values, namely “liberty, equality, human dignity and religious toleration.”³⁰² France’s view of religious symbols is the opposite of Italy’s.³⁰³ In the French model of secularism, religious symbols are inherently negative and threatening.³⁰⁴ France does not separate religious symbols from the negative

²⁹⁵ Stasi, *supra* note 64, at 17.

²⁹⁶ *Id.*

²⁹⁷ *See supra* notes 293, 294.

²⁹⁸ *Lautsi*, App. No. 30814/06 ¶ 16.

²⁹⁹ *See id.* ¶ 15.

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ Compare Part II.A, with Part II.B.

³⁰⁴ *Supra* note 146 and accompanying text.

history surrounding them, as Italy does, but treats the symbols as tools of proselytism that threaten the separation of church and state.³⁰⁵

Beyond the basic view of religious symbols as either positive or negative, France and Italy differ on the effect of the symbol as inclusionary or exclusionary, which informs the value or harm perceived in the presence of the symbol. One of the central elements of the Italian government's argument in *Lautsi* was that as a Christian symbol, the crucifix is inclusive.³⁰⁶ Italy argued that, although "religious symbols in general imply a logical exclusion mechanism," the central belief in Christianity is charity, rejection of non-Christians is antithetical to the religion.³⁰⁷ As such, the cross cannot act as an exclusionary symbol because it symbolizes acceptance.³⁰⁸ France, by contrast, views religious symbols as indications of allegiance to a specific group, rather than the national community, which signals rejection of general society.³⁰⁹ This is evident in the Stasi Report's assumption that the presence of religious symbols in schools will undermine the purpose of public education to prepare students to live together in society.³¹⁰ One of the Report's justifications for the ban of religious symbols in public schools was that it would create an opportunity for integration and lay the foundation for "a life rule in common."³¹¹

The conception of religious symbols as positive or negative and inclusive or exclusive shapes the legal approach to the regulation of religion in public education. For Italy, the positive nature of Christian religious symbols creates an environment that is also friendly to non-Christian religious symbols.³¹² *Lautsi* speaks to the positive attitude toward Christian symbols, but there are indications outside of the case that this positive attitude is extended to the symbols of other religions. Most notable in Italy is the near complete lack of attempts to regulate the presence of religious symbols.³¹³ The 1998 Immigration Code stated that Italian schools embrace cultural difference as a value, and that religion is a cultural difference to be accepted.³¹⁴ In 2014, the Minister of Public Education's guidelines took for granted that girls were permitted to wear veils to school and

³⁰⁵ See *supra* notes 266–67 and accompanying text.

³⁰⁶ *Lautsi*, App. No. 30814/06 ¶ 15.

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ Stasi, *supra* note 64, at 17–18.

³¹⁰ *Id.*

³¹¹ *Id.* at 55.

³¹² See *infra* notes 314–17 and accompanying text.

³¹³ See *infra* notes 314–19.

³¹⁴ Ennio Codini, *The Veil at School in Italy and in France*, 5 ITALIAN L. J. 71, 76 (2019).

did not mention the matter in the guidelines for managing the integration of foreign students.³¹⁵ In 2015, the principal of an Italian high school attempted to ban the display of religious symbols and specifically ban headscarves in the classroom.³¹⁶ The regional education authority countered the rule and stated that there was no justification for banning “signs of expression of one’s cultural and religious affiliation.”³¹⁷ Italian officials have explicitly rejected France’s approach to Islamic religious symbols on several occasions, including in the 2007 Charter of Values, Citizenship and Integration (a legally binding agreement between new immigrants and the state), which states that Italy does not follow France’s choice to ban headscarves as long as they do not hinder identification of the person.³¹⁸ The view that religious symbols are positive representations of religion, culture, history, and values carries over to Islamic symbols. The acceptance of religious symbols is so complete it barely needs acknowledged in law.³¹⁹

For France, the assumption of negativity makes it impossible to accommodate different viewpoints on the nature and purpose of religious symbols, which demands a hostile legal treatment. The Stasi Report acknowledges that France’s history of conflict with the Catholic Church created a focus on defending social unity, which resulted in the perception of all difference as threatening.³²⁰ The Report claims this is no longer true in modern France, but its own proposals and the treatment of the student in *Dogru* indicate that the state has simply replaced the Catholic Church with Islam as the main threat to secular society.³²¹ The central focus of the enforcement of secularism in public education and public spaces generally is combatting Islam, which is often presented as synonymous with radicalism and terrorism.³²² As part of the commission that produced the Report, a variety of people were interviewed about their perception of the headscarf.³²³ The Report found that to those who wear it, it can be either a personal choice or a constraint.³²⁴ However, for those who do not wear it, it was a symbol of stigma.³²⁵ The Report thus concluded that

³¹⁵ *Id.* at 76 n.23.

³¹⁶ *Id.* at 76–77.

³¹⁷ *Id.* at 77.

³¹⁸ *Id.* at 76.

³¹⁹ *Id.*

³²⁰ Stasi, *supra* note 64, at 20.

³²¹ *Id.*; see also Part II.B.

³²² See Francois, *supra* note 69.

³²³ Stasi, *supra* note 64, at 53.

³²⁴ *Id.*

³²⁵ *Id.*

the headscarf was a source of division, resented for its disruption of neutral space.³²⁶ Despite indications from the people who wore the headscarf that it was not inherently negative, coercive, or demeaning, the Report put more weight on the outside perception of the symbol.³²⁷ The persistence of the instinct to protect social unity, combined with the assumption that religious symbols must have a negative impact, results in a legal framework that cannot accommodate the presence of religion.

These two ways of thinking about the role of religion within secularity affect the place of religious symbols within the public sphere, specifically within public education. Within the Italian framework, where there is no conflict with religion and secularism, religious symbols are mutable and can change meaning depending on context. This was the government's argument in *Lautsi*.³²⁸ Religion is part of the foundation of Italian secularism and Italian national values, culture, and tradition. Therefore, the crucifix can be both representative of the divine in a religious context and representative of history and culture in an educational context.³²⁹ The Immigration Code's statement that Islamic headscarves are accepted in schools as a religious *and* cultural symbol suggests that this framework would also apply to non-Christian symbols.³³⁰ Presumably, in a mosque the headscarf would communicate piety and, in a school, would function as a cultural symbol. Italian secularism does not require a firm delineation between religion and the public sphere, which allows for religious symbols to take on different meanings depending on context.³³¹ This allows for public spaces to remain functionally neutral regarding religion without removing it because the religious symbol is understood as not always overtly and inherently religious.³³²

The opposite is true in France. French secularism requires a continual rejection of religion from the public sphere, and religious symbols are immutable.³³³ For French public spaces to remain neutral, religious symbols

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ *Lautsi v. Italy*, App. No. 30814/06, Eur. Ct. H.R. ¶ 16 (Mar. 18, 2011), <https://hudoc.echr.coe.int/eng?i=001-104040>.

³²⁹ *See id.*

³³⁰ *See Codini, supra* note 314, at 76.

³³¹ *Id.*

³³² *See id.* at 77 (discussing a circular published by the regional head of education in Friuli in response to a school principal's attempt to ban headscarves). The circular referred to "signs of expression of one's cultural and religious affiliation," indicating an understanding of headscarves as both cultural and religious symbols. *Id.*

³³³ *See* Part II.B.

must be excluded because they are always explicitly religious.³³⁴ This is revealed by the Stasi Report's statement, in reference to religious symbols in schools, that it is difficult to reconcile neutrality of the state with "aggressive proselytizing."³³⁵ If religious symbols are immutable in their representation of not only adherence to a sect but aggression, division, and coercion, then it is impossible to avoid the conflict of secularism and religion in public spaces. For public spaces to remain neutral, religion must be removed.

III. EFFICACY OF THE TWO LEGAL FRAMEWORKS AND A PROPOSED NEW APPROACH FOR FRANCE

There are significant potential harms to students in both France and Italy. The effectiveness of each approach is evaluated in relation to the goals of public education shared by Italy and France, most importantly integration of students from outside the nation and the transmission of national culture and values. To consider how well each country's approach to the regulation of religious symbols in public schools aligns with these goals, it is most helpful to look at how these policies and laws affect non-Christian and immigrant students. For both countries, the most significant immigrant population is Muslim.³³⁶ In Italy, where public school classrooms are explicitly Christian spaces, there is a risk that students of non-Christian backgrounds will be alienated by the presence of the crucifix.³³⁷ In France, the ban on religious symbols has already resulted in the removal of Muslim students from schools, which directly contradicts the goal of integration.³³⁸ An examination of the consequences of the ban in relation to the aims stated by Stasi Report, as well as the broader French policy toward the regulation of Islam, reveals that the legal approach is at best ill-suited and at times wholly counterproductive to the goals of integration and transmission of national values. This Part proposes that France would be better positioned to achieve these aims through the adoption of several abandoned proposals put forth in the Stasi Report and the incorporation of some more flexible

³³⁴ See *supra* notes 321–22 and accompanying text.

³³⁵ Stasi, *supra* note 64, at 19.

³³⁶ OFF. INT'L RELIGIOUS FREEDOM, 2021 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: ITALY (June 2, 2022), <https://www.state.gov/wp-content/uploads/2022/04/ITALY-2021-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>; OFF. INT'L RELIGIOUS FREEDOM, 2021 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: FRANCE (June 2, 2022), <https://www.state.gov/wp-content/uploads/2022/03/France-2021-INTERNATIONAL-RELIGIOUS-FREEDOM-REPORT.pdf>.

³³⁷ See Part II.A.

³³⁸ *Supra* note 226.

characteristics of the Italian approach, particularly the ability to contextualize religious symbols as non-threatening cultural indicators.

The Italian position is that inclusion of religion in public schools promotes social cohesion and communicating Italian values.³³⁹ The Italian courts painted a rosy picture of the crucifix in public classrooms as a positive symbol that could not, by its very nature as Christian, be exclusionary to students of non-Christian backgrounds.³⁴⁰ For the purposes of defending the display of the crucifix in *Lautsi*, the Italian courts attempted to recontextualize it as at least partially non-religious when present in an educational setting.³⁴¹ The courts made no attempt to argue that the crucifix did not create an explicitly Christian space, instead arguing that a Christian space was inclusive and necessary for the transmission of Italian values and history to students.³⁴² The most obvious drawback of this approach is the potential alienation of students of non-Christian backgrounds.

One example of dissatisfaction with the display of the crucifix is *Lautsi* itself, where atheist parents protested its presence.³⁴³ The Italian Court of Cassation, the highest court in the country, decided another case of an atheist objecting the display of the crucifix in September of 2021.³⁴⁴ In the 2021 case, a teacher was disciplined by his school for removing the crucifix at the beginning of every lesson in protest of what he felt was a violation of his freedom of conscience and the principle of religious neutrality.³⁴⁵ The court held that the royal decrees requiring the display of the crucifix could not justify disciplinary sanctions against the teacher but that the crucifix did not constitute a violation of the teachers' rights, a decision in line with the reasoning of *Lautsi*.³⁴⁶ The key holdings of the case are that the display of the crucifix is no longer mandatory and that schools must attempt to find compromises where students and teachers disagree about the presence of the symbol.³⁴⁷ Underscoring the deeply

³³⁹ See *supra* notes 179–80 and accompanying text.

³⁴⁰ See *supra* notes 196–203.

³⁴¹ Mancini, *supra* note 144, at 2639.

³⁴² See *Lautsi v. Italy*, App. No. 30814/06, Eur. Ct. H.R. ¶ 15 (Mar. 18, 2011), <https://hudoc.echr.coe.int/eng?i=001-104040>.

³⁴³ *Id.* ¶ 11.

³⁴⁴ Cass., settembre 2021, n. 24414/2021 (It.), <https://www.lawpluralism.unimib.it/en/oggetti/818-italian-court-of-cassation-joined-chambers-corte-di-cassazione-no-24414-2021-9-september-2021>.

³⁴⁵ Francesco Alicino, *Ceci n'est pas une pipe: The Crucifix in Italian Schools in the Light of the Recent Jurisprudence*, CANOPY F. ON INTERACTIONS L. & RELIGION (Nov. 30, 2021), <https://canopyforum.org/2021/11/30/ceci-nest-pas-une-pipe-the-crucifix-in-italian-schools-in-the-light-of-recent-jurisprudence/>.

³⁴⁶ *Id.*

³⁴⁷ *Id.*

embedded nature of Catholicism in Italy, the teacher was disciplined as a result of a majority vote for the display of the crucifix by the students.³⁴⁸ The court held that the school director was wrong to sanction the teacher without taking his opposing opinion into consideration and instead should have reached an agreement acceptable to both the students and the teacher.³⁴⁹ In the 2021 case, the popular opinion of the students involved was to keep religion in the classroom, as was the opinion of the general public in *Lautsi*.³⁵⁰

Both cases demonstrate that the presence of the crucifix can cause discomfort to non-Christians, but also indicate that the majority opinion in Italy supports the presence of religion in the classroom.³⁵¹ The court in the 2021 case stated that other religious symbols could be hung in classrooms by student request, in addition to the crucifix.³⁵² This indicates that Italy's evolving approach to the issue is to include greater religious diversity to navigate differences of belief, rather than remove all religion to eliminate disagreement.³⁵³ This has clear harms to students, like those in *Lautsi*, who are not adherents of any religion but are nonetheless required to occupy an explicitly religious space. Although the harm to non-religious students is real and serious, it is not as harsh as the consequences for students of minority religions in France.³⁵⁴ The Italian classroom, although potentially alienating to non-religious or non-Christian students, does less harm

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ See Giulio Itzcovich, *One, None and One Hundred Thousand Margins of Appreciations: The Lautsi Case*, 13 HUM. RTS. L. REV. 287, 289 (2013). The initial decision of the Chamber that Italy could not require the display of the crucifix in public classrooms caused a furor in Italy. *Id.* In Italian politics, the government and all but the far-left parties condemned the ruling. *Id.* The spokesman of the Vatican stated that the court was ignoring the role of Christianity in shaping European identity. *Id.* The Lautsi family released a letter alleging that they had been subjected to verbal abuse by the Minister of Defense, who shouted “[d]eath to those people [the secularists] and to those fake international institutions that don’t count for anything!” while being interviewed on a television program. *Id.* The backlash in Italy to the ruling of the Chamber demonstrates that the arguments the government made in favor of the display of the crucifix, in particular how the symbol reflects Italian values, were in line with the dominant beliefs of the country. See *id.*; *Rulings in Europe and South American Affirm Display of Christian Symbols*, AM. DAILY HERALD (Mar. 27, 2011, 6:03 PM), <https://web.archive.org/web/20110903221947/http://www.americandailyherald.com/20110328360/religion/rulings-in-europe-and-south-american-affirm-display-of-christian-symbols>.

³⁵¹ *Rulings in Europe and South American Affirm Display of Christian Symbols*, AM. DAILY HERALD (Mar. 27, 2011, 6:03 PM), <https://web.archive.org/web/20110903221947/http://www.americandailyherald.com/20110328360/religion/rulings-in-europe-and-south-american-affirm-display-of-christian-symbols>.

³⁵² Alicino, *supra* note 345.

³⁵³ *Id.* (“[T]he Joint Section of the Supreme Court underscored the importance of an open-public debate involving all school bodies and aimed at reaching reasonable results. As such, these results must be capable of satisfying different needs. In particular . . . the debate should be aimed at accommodating the rights and freedoms of all persons involved.”).

³⁵⁴ Compare notes 339–47, with notes 362–65.

because it allows students to participate in the classroom without removing elements of their identity.

There is some evidence that Italy's decision to include religion in the classroom yields better results for the integration of students, especially with attention to immigrant populations of non-Italian cultural backgrounds.³⁵⁵ A 2010 to 2011 survey of students in lower secondary schools in Lombardy, the most religiously diverse region of Italy, found that religious diversity was associated with positive educational outcomes for both Italian and non-Italian students, including a higher level of integration and improvement in relationships with peers, teachers, and classmates of different cultural backgrounds.³⁵⁶ A similar study by the same researchers, also conducted from 2010 to 2011, found that both Italian and non-Italian students were satisfied with their school experience and appeared open to students of diverse backgrounds, with seventy-five percent reporting that they got along well with their classmates.³⁵⁷ The study found that the most impactful factor in the integration and acceptance of students of diverse religious or cultural backgrounds was the frequency with which teachers took measures to promote the integration, suggesting that greater attention paid to the diversity was more beneficial than ignoring it.³⁵⁸ The study's suggestions for improving integration of students were to (1) control classroom demographics to achieve a balance of Italian and non-Italian students, (2) invest in long-term programs for underachieving students, and (3) promote intercultural interaction in curricular and extra-curricular activities.³⁵⁹ Although these studies are limited in scope and geographically narrow, the data pushes back against the assumption that religious and cultural diversity are great sources of tensions in schools.³⁶⁰ On the contrary, they suggest that Italy's instinct to promote religion in the classroom, especially the most recent move in the 2021 case to consider student preference in the display of religious symbols, is more beneficial for the integration of non-

³⁵⁵ See *infra* notes 356–61.

³⁵⁶ Mariagrazia Santagati et al., *Religiosity and School Integration Among Italian and Non-Italian Students. Results From a Survey in Multi-Ethnic Classrooms*, 57 *STUDI DI SOCIOLOGIA* 197, 206 (2019).

³⁵⁷ Maddalena Colombo & Mariagrazia Santagati, *School Integration as a Sociological Construct: Measuring Multi-Ethnic Classrooms' Integration in Italy*, in *LIVING IN TWO HOMES: INTEGRATION, IDENTITY, AND EDUCATION OF TRANSNATIONAL MIGRANTS IN A GLOBALIZED WORLD* 253, 272 (M. Herold & R.M. Contini eds., 2017).

³⁵⁸ *Id.* at 284.

³⁵⁹ *Id.* at 289.

³⁶⁰ See Santagati, *supra* note 356, at 198.

Italian students and creates a positive educational experience for both Italian and immigrant students.³⁶¹

To evaluate the effectiveness of France's regulation of religious symbols in schools with respect to the goal of integrating students, it must be acknowledged that France's recent laws addressing religious freedom are aimed at Islam.³⁶² Representatives of the state, including President Macron and Interior Minister Darmanin, have equated religion and Islamic religious practices with radicalism.³⁶³ The concerns addressed by the 2021 Upholding Republican Values bill are the same ones put forth by the Stasi Report with respect to schools—community withdrawal, the economic situation in areas with large migrant populations, and the treatment of women and girls.³⁶⁴ These measures are all focused on the Muslim community and purport to address concerns of radicalism and terrorism.³⁶⁵

The focus on Islam leads to a disproportionate impact on students of non-Christian backgrounds, like Muslims, Jews, and Sikhs, for whom religious clothing is important both religiously and culturally.³⁶⁶ The ban presents a choice to these students to either remove the clothing or remove themselves from the school.³⁶⁷ This is the major downside of the French approach—if students do not wish to remove the religious symbol, they will be removed from school, thus accomplishing the withdrawal from society and social stratification feared by the state.³⁶⁸ The Stasi Report argued that less accommodation of religion in schools was necessary because “access for all to school is weakened by instances of removal from school for religious reasons,” but the complete lack of accommodation results in a total loss of access to school for some students.³⁶⁹ The Report presented the ban on religious symbols as an “opportunity for integration” for students of different religious and cultural backgrounds, but this integration cannot occur if students are not present in schools.³⁷⁰ In several ways the ban causes the ills used by the Report to support the ban, including an increased reliance on correspondence education, which at least fifty students

³⁶¹ *Id.*

³⁶² Francois, *supra* note 69.

³⁶³ *Id.*

³⁶⁴ See Cohen, *supra* note 66; Stasi, *supra* note 64, at 43.

³⁶⁵ See Cohen, *supra* note 66.

³⁶⁶ INT'L CTR. FOR ADVOCS. AGAINST DISCRIMINATION, *supra* note 225, at 3.

³⁶⁷ Vickers, *supra* note 145, at 601.

³⁶⁸ See *id.*

³⁶⁹ Stasi, *supra* note 64, at 40.

³⁷⁰ *Id.* at 55.

chose in the year following the passage of the law.³⁷¹ On a general level, the ban is contradictory to its stated purpose.

The trend toward further division of religious and non-religious students has continued with the recent passage of the Upholding Republican Values bill.³⁷² The law expands requirements for neutrality for public employees, tightens control on religious associations, and places limitations on homeschooling.³⁷³ Beginning September 2022, homeschooling is only allowed for reasons of illness, disability, specialized training in arts or sports, or a geographic impossibility of attending school.³⁷⁴ The new requirements for homeschooling push students with religious convictions to attend private schools, the majority of which are Catholic, that have the freedom to allow religious symbols in school.³⁷⁵ The turn toward heavier reliance on private schools is a continuation of the strict divide with Catholicism enacted in the initial removal of the Church from its place in schooling and is not useful for achieving the state's aim of integrating students into French culture.³⁷⁶ Pushing students who are not willing to abandon their religious identities into private schools further silos religious and non-religious students.

The Upholding Republican Values bill, like the 2004 ban, fails to address these issues because it causes further stratification between immigrant and non-immigrant, religious and non-religious communities. This only enhances the negative feelings towards the state in populations that already feel alienated by discrimination, like Muslims and Sikhs.³⁷⁷ A 2010 survey of forty-two Sikh students in Paris, conducted by the non-profit advocacy group United Sikhs, found that over half of the students felt “humiliated and singled out” and over a third felt a loss of identity for complying with the law.³⁷⁸ Interviews with Sikh

³⁷¹ There are not precise figures available at the national level for how many students did not return to school after the passage of the law. At least some of the 143 students excluded from school in 2004 and 2005 did not return, some opting for distance education, others for work programs or Catholic private school. Luc Bronner and Xavier Ternisien, *Les signes religieux ostensibles ont pratiquement disparu des écoles [Conspicuous Religious Symbols Have Practically Disappeared from Schools]*, LE MONDE (Sept. 29, 2004, 2:17 PM), https://www.lemonde.fr/societe/article/2005/09/29/les-signes-religieux-ostensibles-ont-pratiquement-disparu-des-ecoles_694106_3224.html.

³⁷² Marin, *supra* note 67; 2021 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: FRANCE, *supra* note 336, at 7.

³⁷³ 2021 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: FRANCE, *supra* note 336, at 7.

³⁷⁴ *Id.* at 8.

³⁷⁵ *Id.*

³⁷⁶ *See supra* notes 23–34.

³⁷⁷ INT'L CTR. FOR ADVOC. AGAINST DISCRIMINATION, *supra* note 225, at 5.

³⁷⁸ *Id.*

boys conducted by the International Center for Advocates Against Discrimination found that boys who were required to leave their hair uncovered faced bullying within their community.³⁷⁹ In 2005, the Islamic Human Rights Commission collected testimonies from Muslim students who reported similar feelings of shame and increased negativity in interactions with classmates and teachers.³⁸⁰ In 2018, the Center for the Study of Conflict in Paris conducted a study of French Muslims and found that 17.6% of Muslim students felt discriminated against at school, compared to 5.4% of the rest of the population.³⁸¹ The survey further found that 41.7% of parents of children and adolescents had asked their children to be careful about what they said in school, and 35.2% of young people under twenty-five felt mistrust for educators and social workers.³⁸² These numbers demonstrate that efforts to combat the perceived danger of religious radicalism only increase negative experiences and feelings, especially in schools.³⁸³ As shown by the Italian study on Muslim students, one of the most important factors in the successful integration of students is a positive school environment.³⁸⁴ France's approach is damaging to the experience of students in public schools, even for those who choose to remove the religious clothing to continue participating, which is antithetical to the goals of "integration and social elevation" stated in the Stasi Report.³⁸⁵

There are several positive features of Italy's approach that would be beneficial if adopted in France. Italy is able to integrate children of diverse religious and cultural backgrounds more successfully by inviting them into the classroom with their identities intact.³⁸⁶ This allows students to participate in the space that transmits national culture and values. Although the Italian classroom is a Catholic space, it more successfully integrates students by creating a more positive learning environment and enabling teachers to focus on diversity.³⁸⁷ The presence of religion in Italian classrooms is a positive feature that helps students achieve greater learning outcomes.³⁸⁸ This model is not completely foreign to

³⁷⁹ *Id.*

³⁸⁰ *Id.* at 5–6.

³⁸¹ Francois, *supra* note 69; Francesco Ragazzi et al., *Les effets de la lutte contre le terrorisme et la radicalization sur les populations musulmanes en France [The Effects of the Fight Against Terrorism and Radicalization on the Muslim Population in France]*, CENTRE D'ÉTUDE SUR LES CONFLITS [CTR. CONFLICT STUD.] 27 (2018).

³⁸² Ragazzi, *supra* note 381, at 61–62.

³⁸³ See INT'L CTR FOR ADVOC. AGAINST DISCRIMINATION, *supra* note 225, at 6.

³⁸⁴ Colombo & Santagati, *supra* note 357, at 276.

³⁸⁵ Stasi, *supra* note 64, at 53.

³⁸⁶ See Codini, *supra* note 314 at 76.

³⁸⁷ Colombo & Santagati, *supra* note 357, at 276.

³⁸⁸ Santagati, *supra* note 356, at 201.

the French educational system, as it is the current situation of Catholic private schools.³⁸⁹ Catholic private schools are required to follow the state curriculum but may teach religion and choose to allow religious symbols in the classroom.³⁹⁰ Integrating the policies applied to state and private schools is an area where breaking down the rigid divide born of the French state's relationship with Catholicism would be productive. Allowing greater flexibility for schools and students to elect whether religious symbols should be present in the classroom, and pursuing a policy of compromise as Italy does, would eliminate the need for students to either lose their cultural identity or be excluded from public school.³⁹¹ Eliminating the demonstrated ill effects of the forced removal of religious and cultural symbols on students would be a better path to creating the positive learning environment necessary for students to successfully integrate.³⁹²

There are also proposals contained in the Stasi Report itself that were not included in the 2004 legislation that would be helpful if adopted. The Report proposed emphasizing gender equality in curriculum, reintroducing a civil service program to promote social mixing and cultural exchange, and monitoring religious sports facilities to ensure that girls are not excluded and that the history of decolonization and immigration is taught.³⁹³ These proposals could create a more well-rounded program for integration and the teaching of national values. One of the major failings of the 2004 law is it removes children from school and leaves them without the exposure to French values that is presented as so essential for social unity, thus further dividing French society.³⁹⁴ Further, the proposals are focused on the recognition and accommodation of religious diversity, while at the same time ensuring that students are taught about secularism.³⁹⁵ These proposals, combined with a more flexible approach to religious symbols that does not require their total removal, would create the positive effects of the presence of religion and religious and cultural diversity in classrooms that is seen in Italy.³⁹⁶ At the very least, this modified approach

³⁸⁹ See 2021 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: FRANCE, *supra* note 336.

³⁹⁰ *Id.* at 5.

³⁹¹ See Alicino, *supra* note 345.

³⁹² See *supra* notes 305–11 and accompanying text.

³⁹³ Stasi, *supra* note 64, at 49–51.

³⁹⁴ Stasi, *supra* note 64, at 52 (“Their [schools’] mission is essential for the Republic. They transmit knowledge, form the critical spirit, assure personal autonomy, openness to the diversity of cultures, and education of person, the formation of citizens as well as future professionals.”).

³⁹⁵ Mancini, *supra* note 144, at 2645.

³⁹⁶ *Supra* note 286.

would no longer produce the shame and stigma felt by students who are forced to either abandon their cultural and religious identities or leave school.³⁹⁷

The difficulty with modifying France's approach is the entrenched nature of opposition to religion in the public sphere, a status quo that dates back to the period following the French Revolution.³⁹⁸ Religious symbols are perceived as inherently threatening to the state, secularity, and national unity.³⁹⁹ But the changing demographics of France and the importance to the nation of successfully integrating children of diverse backgrounds through the school system requires a change in the legal framework. The comparison of France and Italy makes clear that the assumption that a strictly regulated secular space is more beneficial for students is false. France's current approach makes it more difficult for the very students it most wants to integrate into society to participate in a positive learning environment. Although the framework may have been a logical and effective means for the nascent Republic to curtail the influence of the Catholic Church, its current persistence is failing both students and the state by exacerbating the ills most feared by the state. To achieve the goals of secular education, France must modify its approach to the regulation of religious symbols in public schools.

CONCLUSION

Although France and Italy both identify public classrooms as essential spaces for the communication of national values and culture, the two nations take radically different approaches to the achievement of that goal through the regulation of religion in these spaces. Their long, complicated, and often violent histories with the Catholic Church have led to two significantly different versions of secularism that shape national understanding of the place and value of religion. For France, a secularism born of a complete repudiation of the Church and of religion in public life has led to a rigid framework that requires the removal of threatening religious symbols from public life. For Italy, a flexible and accommodationist relationship with the Church has shaped a secularism that is rooted in religious values and encourages the presence of religion. These two versions of secularism are explored in the cases of *Lautsi v. Italy* and *Dogru v. France*—two cases that demonstrate the impact of these different attitudes toward religion when applied in law. A comparison of the

³⁹⁷ *Supra* notes 307–08.

³⁹⁸ *See supra* note 10 and accompanying text.

³⁹⁹ *See supra* Part II.B.

legal frameworks and the various effects on students reveals the weakness of the assumption that the presence of religion in public spaces is inherently a source of tension, conflict, and social division. When viewed in parallel to Italy's inclusive approach to religion in the classroom, France's inflexible and prohibitory framework has serious failings, especially in its disproportionate consequences for non-Christian and immigrant students. To cure these deficiencies, France should modify its approach to incorporate elements of greater flexibility toward religious symbols, which would require moving away from a version of secularism built to confront the power of the Catholic Church that is ill-equipped to handle the changing demographics of contemporary France.

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* Notes and Comments Editor, *Emory Law Journal*, Volume 73; Emory University School of Law, J.D., 2024; University of Cambridge, MPhil, 2019; Portland State University, B.A., 2018. My deepest gratitude first to my advisor, Hallie Ludsin, for her enthusiasm and thoughtful feedback. I am grateful for the hard work, patience, and dedication of the staff of the *Emory Law Journal* – this piece would not be what it is without their incredible work. Finally, and most importantly, thank you to my parents for their unwavering support throughout my educational journey, and for giving me the invaluable gifts of perseverance, curiosity, and a love of learning.