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When Values Compete: Reconciling the Tension Between National Security, Religious Freedom, National Identity and Islam in the U.S. and France

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When Values Compete: Reconciling the Tension Between National Security, Religious Freedom, National Identity And Islam in the U.S. and France

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Introduction

The United States and France are both struggling with a policy dilemma of national and international significance arising from the tension between principles of religious freedom and the need to protect their national identity. Many residents of both countries believe that Muslims threaten their national security. This widespread fear of Muslims is evident in both countries, on the local and federal level. States, counties and towns as well as federal legislative bodies in the two countries have attempted to limit the religious freedoms of Muslim citizens, residents and immigrants. Political parties and demographic groups from across the political spectrum, from left to right, view this policy dilemma as an existential challenge to their respective countries. On the one hand, some Muslims’ non-acceptance of their adopted country’s mainstream social norms and mores, and even their legal systems, makes some American and French groups argue that the essence of their societies is at risk. The participation of even a very small number of Muslims in terrorist acts, at times with ties or declared allegiance to foreign terror organizations, generates fears and demands for a security policy that treats an entire immigrant population as a threat. Conversely, the demand for policies that impose an “American” or “French” way of life or culture and force religious expression out raises concerns among many American and French citizens and politicians. They fear that their countries’ fundamental commitment to religious freedom, civil liberties and tradition of sanctuary, a key part of their national value system, could be sacrificed. With predictions that the number of Muslims worldwide will be equal to that of Christians by 2050, the tension between these
principles will only become more salient.¹

This thesis seeks to explore how religious freedom, controlled through U.S. and French legislation and jurisprudence, has conflicted with national identity. National identity has been measured by conforming or not to social, political and cultural norms. This thesis will also demonstrate how religious freedom has conflicted with national security policy, resulting in policies that reflect American suspicion of Muslims and inspire backlash from the Muslim world. Chapters one and two will analyze how France and the United States have each faced the challenge of protecting religious freedom, absorbing immigrants into their nations and maintaining national identity and security over their long histories. Next, Chapters three and four will move to the more contemporary challenges of balancing religion and national identity, raised in France primarily by its population of North African immigrants and in the United States by a more diverse range of immigrant groups from Muslim-majority countries. Then Chapters five and six will explore the specific current day concerns and policy challenges such as the burkini in France and the anti-Muslim policies of President Trump, and will provide a critique of the policy options for each country and the strengths and weaknesses of various approaches.

Finally, the conclusion will assess the current political players and how their actions may influence future religious and immigration policy, and draw on the strengths and weaknesses of each country’s policies to develop new policy alternatives.

CHAPTER 1: LAÏCITÉ AND THE EVOLUTION OF RELIGION IN FRANCE

While all countries view the role of religion differently, France’s notion of laïcité\(^2\) separates it from the majority of western countries. Most of the French embrace laïcité; for them it is a liberal and tolerant concept that prevents religion from intruding into the civic space. So what is the problem? This principle of strict secularism has evolved throughout the country’s long history and has developed into a mechanism used to curb religion and religious practice rather than safeguard religious liberty, namely that of Muslims. As the percentage of Muslims in France rises and France becomes increasingly diverse, the tension between laïcité and freedom of religion has become a political crisis that remains largely unsolved. France’s roots in tradition have led the country to develop a rigid national identity and create a policy of laïcité that most are unwilling to adapt to solve the current woes. The story of this ideological development begins with the French Revolution.

In 1789 France found itself in a precarious place. The monarchy and church were the center of power in a country that no longer supported either institution. Economic, political and religious crises led to the popular revolt known as the French Revolution. Through violence the people rebelled against the monarchy, aristocracy and clergy. Priests were guillotined, Notre Dame was taken over, political dissidents were imprisoned, and battles broke out in the streets of Paris, marking what had been the most radical persecution of Christians in Europe since end of the Roman Empire.\(^3\) The King at the time, Louis XVI, was forced to switch his rule from that of an absolute monarch to a

\(^2\) Laïcité is translated to secularism, but also calls for separation of church and state, liberty of conscience and state neutrality in religious matters.

constitutional monarch. When Louis XVI faced the guillotine the constitutional monarchy eventually gave way to a republic. The end of the monarchy and the rebellion against the Church signaled a shift towards republicanism, and away from religion.

With the destruction of the *ancien regime* and the Constitution as the new basis for ruling, religion no longer played an important role in French life as it had since it’s founding when religion and politics were tightly intertwined. This shift away from religion occurred for several reasons. The *philosophes* of the Enlightenment criticized the Church and systematically questioned the credibility of religion. Their focus on progress and reason as the basis for being eroded faith in religion and depicted the clergy as useless members of society who, by pledging allegiance to the religious state sacrificed civil liberties. In addition, the French people saw Catholicism as a threat to democracy for its hostility to individual liberties and its hegemonic presence. The Catholic Church, as part of the State, exercised considerable power over the country through land holdings and revenues. This caused a strong hostility towards the religious powers and clergy who for decades prior to the Revolution had become rich off the French people. Their disregard for French citizens and the usurpation of Catholic power led the National Assembly to nationalize all church land, putting the power into the hands of the government. This political move signaled a weakening of church power and was reflective of a diminishing religiosity in French society.

The next significant state action was the requirement of all clergy to take a public oath of loyalty to the state. This pledge of loyalty to the state came to characterize French
national values, and led to development of the concept of *laïcité*. *Laïcité* is often translated into English as secularism, but it also suggests the same pledge of loyalty the clergy were forced to take. The idea was and continues to be, that the French are first and foremost members of the nation of France. Religion should come second to citizenship. Despite efforts to rid the nation of Catholicism, through the nationalization of land and the pledge of loyalty, the French people continued to practice in their homes. Rather than force Catholicism out, the government had forced religion into private life. The need to separate Church and State while allowing private practice became more apparent and it was in the Republics' first Constitution, the 1791 *Déclaration des Droits de l'Homme et du Citoyen*, that the concept of freedom of religion was outlined.\(^6\) Rather than granting the people protection of the state against religious influence in society, the *Déclaration* emancipated the people from the Catholic Church. It provided that no one shall be disturbed for his or her opinions, even religious ones, as long as their manifestation does not disturb the public order established by law. The prescription of maintaining "public order" before all else has become a foundational French concept. This period in French history was characterized by the demand that the people put the state or public order before the church and religion, though the way to ensure this remain unresolved.

Though the Constitution of 1791 emancipated the State from the Catholic Church, additional legislation was passed in 1795 to further separate the two. The 1795 law formally separated Church and State, and prohibited the wearing of "religious ornaments or clothing" in public.\(^7\) However, the political climate changed when just a few years later Napoleon came into power. Though he himself was not an adherent of the Catholic

\(^{6}\) Britton D. Davis, 117.  
\(^{7}\) Britton D. Davis, 117.
Church, he recognized that a relationship with the Catholic Church could provide him with the economic and moral benefits. Napoleon sought to use the Church to his advantage and attempted to negotiate with the pope.\(^8\) However, this failed when in 1802 Napoleon introduced the *Concordat*, a law that required all actions from Rome to be approved by the French government.\(^9\) Relations between Rome and France quickly deteriorated. France became increasingly divided among those who supported Napoleon and those who remained loyal to the Catholic Church and papal authority.

The political instability and class conflict continued into the nineteenth century. The revolution of 1848 ensued, and ended with the development of a new constitution and the creation of the Second Republic. In the constitution of 1848 the citizens were granted the right to personal liberty, freedom of association, peaceful and unarmed assembly, petition and freedom of expression. These liberties did, however, have limits. As Karl Marx notes, liberties came “always with the marginal note that it is unlimited so far as it is not limited by the *equal rights of others and the public safety or by laws.*”\(^10\) The bourgeois, as drafters of the constitution and the wielders of political power, sought to serve their interests and theirs alone: limiting Catholicism in the civic sphere. As a result, public safety only referred to the safety of the bourgeoisie. Resistance to the church was further emphasized in the aftermath of the anti-clerical Paris Commune of 1870. The events of the commune inclined Jules Ferry, Minister of Education from 1879 to 1882, to reduce the influence of the Catholic Church. In 1881 the *Loi Ferry* was passed making public education compulsory, free and laïc (free from religious teachings). Education was

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\(^8\) Betros, Gemma. “The French Revolution and the Catholic Church.”
and is sacred to republicanism, and republicanism embraces a separation of Church and State. Marx made the observation that “each paragraph of the constitution contains its own antithesis...so long as the name of freedom was respected and only its actual realization prevented, of course in a legal way, the constitutional existence of liberty remained intact, inviolate, however mortal the blows dealt to its existence in actual life.”

In short, the constitutional protections did not guarantee the people absolute liberties, because history had revealed that public order had to come first. The same disruption of political power occurs in France today. The politicians enact laws that privilege order over individual liberties, and when they sense a small threat to public order they justify the suspension of those liberties. This was the case during the late nineteenth century. France experienced a surge in nationalism and immigrants, perceived as a threat, were targeted in legislation.

One main cause for the surge in nationalism was the Dreyfus Affair. France was in the midst of a war over land disputes with Germany when a young French artillery officer of Jewish decent was convicted of treason in a closed trial in 1894. *L’Affaire Dreyfus* fueled the rise in nationalism and further discredited the Church by splitting the nation into two camps: the pro-army, Catholic “anti-Dreyfusards” and the anti-clerical, pro-republican “Dreyfusards”. As a Jew from Alsace, Dreyfus embodied everything the nationalist right loathed. The conflict with Germany and the internal division created concern about France’s power, causing the French to view any independent institution that influenced society as a limit on the national governments’ ability to exert control

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over its citizens and their loyalties. The fear that radicals would overpower the government led the French to create a government that would impose the people’s will through legislation rather than check and balances as does the American system. Aware of the country’s fraught religious history, legislators proceeded with caution, passing legislation that would limit the religion in the public sphere with the belief that legislation could cure the country’s social ills.

Throughout the twentieth century, the government, dissatisfied with the legal religious framework, continued to pass legislation that would build a wall of separation between church and state. In 1901 France passed the Law on Associations requiring parliamentary approval of all religious congregations and provisions on freedom of association. Nevertheless, the 1901 law was not sufficient in ending the adversarial relationship between the Catholic Church and the State. This back and forth between the increasingly secular French government and the Catholic authority pointed to one conclusion-- the need to separate the Church and State once and for all.

1.1 The 1905 law on the Separations of the Churches and the State

The 1905 Law of Separation of Churches and the State officially resolved the conflict between the two institutions and developed principles fundamental to the nations’ character. The 1905 Law is based on three pillars, “freedom of conscience, separation of State and Churches, and the equal respect of all faiths and beliefs.” First, the law, by ending official recognition of the Catholic Church, grants the people freedom of belief and practice, with the caveat that religious practice may not disturb public order, an idea that

14 Britton D. Davis, 121.
15 Britton D. Davis, 122.
dates back to the Constitution of the Second Republic. Second, the law protects from
discrimination on the basis of religion by ending public subsidization of religious
institutions. Third, the law respects the rules of every religion and therefore provides
occasional exemptions to some religious groups. For example the state has funded the
building of a few churches and mosques. Nonetheless, the three pillars instituted a policy
of state neutrality toward religious beliefs in the public sphere meant to instill tolerance.
The law highlighted an evolution in French politics, as it was a far more peaceful
approach to curbing the perceived threat of the Catholic Church than the revolutionary
responses a century earlier. It further marked the decline of religion, though Catholicism
in the cultural sense has remained a constant in French society.

This struggle for power between the French state and the Catholic Church
characterized the role of religion in France. Although France has long embraced religious
freedom in its constitutional documents, it has created legislation that unfairly targets
certain populations. The nature of French religious freedom, defined by the singular
threat of one religious body, explains why compared to the U.S., which simultaneously
affirmed the principle of freedom of religion in its respective Constitution of 1789, France
found itself with a quite different conception of the meaning and implementation of
religious liberty. Professor of Constitutional Law and Civil Liberties at L’Université de
Ceris-Pontoise, Pierre-Henri Prélot observes that the French perception of freedom of
religion is uncommon. He says, “In France, freedom of religion emancipated the people
from Catholicism and grants them the protection of the state against religious influence in
society.”16 This suggests that French freedom of religion should in fact be interpreted as

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16 Prélot, Pierre-Henri, 914.
freedom from religion meaning that “man can only belong to the national community regardless of religious beliefs.” The difference between this theology and the American point of view is clear. The threat in the United States was not a religious body but the government itself. This directed the federal government to guarantee the people freedom to practice without government interference, rather than enforce a policy of non-practice (at least in the public sphere) as was done in France.

Politicians, historians, anthropologists and French citizens alike continue to debate the intent of the 1905 law and what its application should look like. They ask themselves, is it a law of liberty or restriction? Pierre-Henri Prélot argues that the Law of 1905 is a law of restriction. He believes that its focus on secularism is necessary for maintaining public order, dating back to the need to maintain public order in light of the political war with the Church.

Jean Baubérot, Chair of History and Sociology of Laïcité at the School of Advanced Studies, disagrees. Baubérot says of the law of 1905: “it is not a law that seeks to chase religion out of public life: to the contrary it’s a liberal text about tolerance.” Baubérot uses history to advance his position. He states that at the beginning of the twentieth century, the parliamentary commission directed to work on the law of 1905 was a joint appointment of Jules Ferry, Ferdinand Buisson and Aristide Briand, all liberal statesmen. The men did not want to suppress religion, but mitigate the political-religious crisis that had devastated the nation since the seventeenth century. According to Baubérot, the three men engaged in a campaign of laïcité that was secular, but not anti-religious nor

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17 Prélot, Pierre-Henri, 914.
anti-clerical. They saw the 1905 Law as a means to protect freedom of belief and practice, while at the same time ensuring a non-religious State.

The political decisions and actions of the twentieth century continued to shape how the French viewed the right to freedom of religion, which by in large was closer to Prélot’s view. Though it may appear unrelated, the 1971 decision of the *Conseil Constitutionnel* (the French equivalent of the U.S. Supreme Court) to incorporate the French preamble of the Constitution of 1946 to the Constitution of 1958 had a significant effect on religious freedom. The preamble of the 1946 constitution proclaimed that women have equal rights to those of men in all spheres. This inclusion became the basis for the right to gender equality, which decades later the French government and feminists would call on to impose the 2004, 2010 and 2016 laws banning religious symbols, veils and burkinis in public. In addition to the call for equality of the preamble, article I of the French Constitution of 1958 states: “France shall be an indivisible, secular, democratic, and social republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs.”

Despite the call for equality irrespective of religion in the Constitution, politicians continue to refer back to the Law of 1905 when establishing freedom of religion. The issue with using the law as the basis for religion in modern life is that first, social and demographic conditions and the make up of France have changed immensely, and second, the French politicians who drafted the 1905 law disagreed over the meaning of separation of Church and State. One camp argued it meant allowing everyone to practice his or her own religion (soft *laïcité*), the other argued that free practice of religion must not be public, state sanctioned and

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19 Britton D. Davis, 125.
20 Britton D. Davis, 125.
confined to the private domain (strict laïcité). When examined more closely, the text of the law of 1905 echoes the former definition of freedom of religion. The principle of laïcité however, echoes the second more restrictive vision.

1.2 Defining and interpreting modern Laïcité

In modern France laïcité is seen as the cornerstone of French society, a reflection of French identity, a rule of French life. History tell us that the modern characterization of laïcité has grown out of the need of the French government to separate itself from the Catholic Church and regain control of the people. As a result of the separation, religious practice and symbols are seen as a step back in the wrong direction and as a threat to the established democracy of the Fifth Republic. Hence, the Fifth Republic continues to grapple with notions of religious freedom and practice of it by its Muslim residents. This is in part because the current interpretation of the principle of laïcité permeates state lines. It seeks to control the internal organization of a religion. Britton Davis recognizes laïcité as a political tool. She points out that laïcité is an undefined concept with “no official agreement as to what it means or what it requires of the French Republic.”

This allows for the principle to be adapted to either attack or protect a religious action. Beginning in 1989 with the Headscarf Dilemma, principles of laïcité were effected in French policy in ways that threatened liberty instead of protecting it. By analyzing the strife religious past of France, characterized by religious conflict between the Catholic Church and the State, the causes of the current tensions become clearer. However, one shaping factor is missing--immigration.

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21 Britton D. Davis, 125.
1.3 Immigration in France

In order to understand how French views of Muslims have evolved, it is necessary to review immigration in France. Low rates of foreign immigration and later large-scale immigration from its former colonies have played into the current conception of *laïcité* and what it means to be French. The French\(^\text{22}\) have been for the most part white and catholic, giving way to a rigid national identity. The *Français de souche*, (French with roots) those with four grandparents born in France consider themselves to be the true French citizens. In 1851 only 1.1 percent of the French population was foreign born, while in the U.S. 9.7 percent of the population was foreign born.\(^\text{23}\) The percent point difference was quite significant in defining the character of each nation. Two decades later in 1911 after the Law of Separation of Churches and State, the foreign born population in France remained low at 2.9 percent,\(^\text{24}\) meanwhile the U.S. the foreign born population had reached 14.7 percent.\(^\text{25}\)

These differences in immigration led to a very different development of national identity for each nation. The U.S. was a multi-religious and multi-cultural nation and therefore it was not emancipation from religion that the country needed, but protection to practice. France remained fairly homogenous, white and catholic and thus there developed a strong French national identity that continues to be central to French life. Anyone who did not fit the French mold was supposed to suppress his or her own foreign identity for the sake of the nation. For this reason we see that France favors a policy of assimilation rather than accommodation.

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\(^\text{22}\) Throughout this thesis my use of the term “the French” refers to the white, catholic majority.
This dates back to the nineteenth century when French colonial power ruled over many Muslim-majority countries. France erected its first immigration and naturalization law in 1889. The law, *Jus Solis*, established citizenship for anyone born in a French territory, and thus appeared to be an invitation to join French society. To the disappointment of these Muslim peoples, laws were enacted that limited their rights. Many categories of people such as the Algerian Muslims were French nationals yet did not have the same political or social rights as full French citizens. This was due to the Crémieux decree in place from 1830 to 1870. The law placed handicaps on the ability of certain French nationals to vote, assemble and serve as civil servants, institutionalizing discrimination between French nationals and French citizens. Yet in spite of this discrimination and culturalized conception of integration, French nationality illustrates some sense of inclusiveness in its willingness to extend limited citizenship to its former ethnically different territories. The theory perhaps being that the stronger the link with French society the more likely the immigrant community would integrate with the traditional republican French people. The French place extreme emphasis on the importance of assimilation and often perceive anyone who challenges French identity as a threat to or burden on French society.

To this end, throughout the twentieth and twenty-first century the government passed immigration laws in a back and forth pattern of restricting and then loosening legislation in an effort to reduce immigration and integrate new arrivals. Though several laws included discriminatory measures on the basis of race, the immigration laws, with the

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exception of Crémieux, did not target religious groups because religion was a largely private matter. The French were instead concerned with controlling the behavior of the immigrants who had made it to French soil. To do this the government tightened immigration laws in the name of national security. One such law was that of 1912 requiring immigrants to carry identity documents with detailed descriptions and pictures, and giving administrative authorities the ability to deny entry to people whose “presence appeared dangerous”.

In stark contrast to the law of 1912, the war and postwar period welcomed immigrants. The state itself became involved in the recruitment of immigrant manpower. However, the French people were less enthusiastic of the rise in immigration when they experienced a depression of wages. An unfavorable bias towards immigrants developed in the 1930’s, and as the depression grew worse legislation was passed authorizing quotas on employment in several industries. This ended as the Second World War began.

The immigration policy of the postwar period was based on the same principles. Postwar reconstruction had revitalized the economy and produced a labor market. The need for immigrants was furthered by the population reduction caused by wartime deaths and low fertility rates. Prompted by the booming economy and job opportunities, large numbers of Muslim citizens hailing from former colonies began to immigrate to France. This shift from nuns to Muslims was quite jarring for the French who still lived in a majority catholic country. The North Africans continued to be viewed as the least desirable, especially the Algerians who had just fought a brutal war of independence against the French in 1954 led by a radical Islamic group attempting to overthrow the

27 Schain, Martin, 42.
secular government. The methods of warfare such as guerrilla fighting, torture tactics and terrorism drew international attention and caused the Algerians to be seen as violent people who posed a threat to internal security. Despite their undesirable standing large numbers of Algerian workers were able to migrate to France through family reunification, guest worker policies and an increase in asylum designations.

As the size and permanence of the Muslim community grew more apparent in the 1960’s and 1970’s, the government tried to both reduce the number of immigrants entering the country and send them home to their countries of origin. In the 1960’s the French Administration attempted to limit Algerian immigration, which represented the largest group of Maghreb immigrants with a population of 800,000, through a series of negotiations and contracts with the Algerian government. Ten years later, the French government attempted to send one million of the legal Muslim immigrants home, first through informal encouragement and then with policies that would subsidize the return trip home. When the effort to send the immigrants home failed, the government reverted to a new tactic: encouraging integration by supporting Muslim organizations. Scared that a lack of integration and employment could lead the Muslim population to rebel, the government supported Islam, encouraging the creation of Muslim organizations. This accounted for the increasing visibility of Islam in France and the ensuing change in policy.

By the 1990s, many of the Muslim immigrants had established patterns of settlement. By living in one geographic area and cultivating their collective identity, they inadvertently made their own assimilation and integration more difficult. Nationhood

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30 Schain, Martin. 47.
31 Schain, Martin, 51.
scholar William Brubacker explains the conflicts over the immigration and integration of North Africans through a historical framework. He believes that “the influx of immigrants from non-white, non-Christian countries and those immigrants’ expression in the 1980s of their desire to retain their own culture and religion inevitably ran up against the brick wall of the French idea of citizenship.”32 The French felt threatened by the Maghreb population resulting in yet another policy shift. Politicians seeking to remedy the lack of integration introduced the requirement of proof of “good integration” in the Loi Chevenement of 1998.33 The law reflects the cornerstone of French society: the requirement of belonging to the country first and any other group second. Today the rise of Islam in France has once again called into question the emphasis the nation places on its values namely, respect for tolerance, willingness to protect civil liberties and how far it will go to safeguard what it regards as its true identity.

This chapter has provided the historical foundation of religion and immigration in France necessary to examine the current tensions between laïcité, Islam, national security, and French policy. The next chapter will provide the historical context in the United States to set up the later comparative analysis.

33 Schain, Martin, 55.
CHAPTER 2: FOUNDATIONS OF AMERICAN RELIGION AND IMMIGRATION

Although the United States is a multi-religious nation today, that was not always the case. The United States has gone through of religious evolution of sorts. It began as a religious haven but very soon several colonies became intolerant of minority religions. The colonies progressed during the era of the Constitution and the Enlightenment resulting in an expansion of freedom of religion. But then, Pan-Protestantism took hold early in the nineteenth century creating a climate intolerant of other religious groups. This, coupled with the Second Awakening and an influx of Catholics and Mormons who arrived in the mid nineteenth and twentieth centuries, caused the country to respond with a fear of aliens and minority religions. Since then U.S. has continued to struggle to come up with a sound principle and application of freedom of religion that allows for religious liberty, and at the same time minimizes threats both perceived and actual from foreign-born populations and religious minorities, today, namely Muslims.

The widely held notion that America has always been a welcoming nation tolerant of all religions is untrue. While the majority of early-generation Americans were Christian, there was significant religious conflict among the Protestant sects. The colonists took the new land for a Protestant country. The homogeneity of chiefly Puritan colonies in New England created a climate intolerant of other religions. Few were spared, Puritan dissidents and Catholics were seen as abhorrent and were discriminated against, killed or banished. Four Quakers were hanged in Boston between 1661 and 1695 for standing up for their beliefs.34 In the Massachusetts Bay Colony intolerance was particularly strong. It quickly became clear that religious tolerance was a term unknown to the colonists.

34 Davis, Kenneth C. "America’s True History of Religious Tolerance."
There were few and very small religious minorities, a handful of Catholics, a handful of Jews and a handful of Muslims. Though the homogeneity began to lessen as new immigrant groups arrived, the intolerance remained high. Small numbers of Irish began immigrating to the colonies as early as the 1600's. Having observed the disastrous effects of Catholicism in Europe, the English sought to keep them out. Still under British control, colonial law limited the number of Catholics authorized to enter the colonies. Consequently, the majority of Irish coming to the new land were Protestant. This fostered religious intolerance that would continue throughout the colonial era, with a strong target on the Catholics. Cotton Mather, a Massachusetts preacher, condemned Catholics in his sermons and created statutes that discriminated against Catholics by limiting their ability to vote and own property. Despite a growing separation from Britain, British rule continued to impact the politics of the colonies, causing the colonists to grapple over their position on religious tolerance.

As more and more immigrants came to the colonies, the struggle became greater and religious differences divided the colonies. The first big wave of non-Protestant immigrants came in 1718. This first major migration was a group of Irish Presbyterians, Catholics, Anglicans and Quakers. Prompted by religious persecution, lack of political autonomy and dire economic conditions back home the Irish sought refuge in the colonies. After their arrival more groups sought refuge in the new nation. Maryland was founded as a religious haven for Roman Catholics but still welcomed persons of all faiths to practice

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35 The small number of Muslims was due to the African slaves. The presence of Islam was unknown to many colonists.
36 Davis, Kenneth C. "America's True History of Religious Tolerance."
without persecution, discrimination or exclusion from political life. The inclusive spirit of its founding did not last very long. By 1750 tensions between the Catholic and Protestant Marylanders were high. Historian Timothy W. Bosworth wrote, “Protestant’s references to Catholics of provincial Maryland appeared quite similar to views expressed about “subversive” minority groups throughout American History.” The arrival of more religious groups created a new uncertainty among the colonists who did not anticipate such religious diversity. Soon it was no longer just British law that tried to prevent immigrants with faiths other than Protestantism from immigrating to the colonies and participating in political life, but American law and policy began to do so as well.

2.1 The Constitution and the Right to Freedom of Religion

When the Revolutionary war ended and King George the III extended an olive branch to Catholics in Canada in 1774, anti-Catholic sentiments grew stronger in America. The increasing intolerance did not stop at disdain; laws were enacted to keep non-Protestants from wielding political power. In Massachusetts only Christians were able to hold office, while Catholics could hold office if they renounced allegiance to the Pope. New York’s State Constitution in 1777 banned Catholics from public office. Maryland and South Carolina formed Protestant state churches. Then a change occurred; spurred by Enlightenment thought, politicians, acknowledging they had come to America to escape religious persecution, began to question the ethics of these restrictive and discriminatory laws many had once tried to escape when fleeing England.

41 " Davis, Kenneth C. "America’s True History of Religious Tolerance."
42 Davis, Kenneth C. "America’s True History of Religious Tolerance."
It was around this time that Thomas Jefferson began a dialogue about the right to freedom of religion. As governor of Virginia, Jefferson drafted a bill that would call for legal equality for all citizens irrespective of religion or lack of religion. When Jefferson was unable to muster support for the bill, Madison came to his aid and began a campaign against religion in government with an essay titled, "Memorial and Remonstrance Against Religious Assessments."\(^{43}\) One of the most important points Madison made was that a religious state would be "a departure from that generous policy, which offering an Asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country."\(^ {44}\) That is to say the United States was founded as a nation for the persecuted and to attempt to limit freedom of religion would have been to go against the very values that prompted the creation of the new nation.

Eventually Jefferson was able to gather support for the *Virginia Act for Establishing Religious Freedom*. After the bill was passed, Jefferson famously wrote that "within the mantle of its protection, [were] the Jew, the Gentile, the Christian and the Mahometan, the Hindoo and Infidel of every denomination."\(^ {45}\) As champions of freedom of religion and separation of Church and State, Jefferson and Madison slowly changed American attitudes.

A symbol of the attitudinal change was the American Constitution of 1787. In Article VI, the Constitution established that there would be no religious test for office, the first of future protections of freedom of religion. It stated that, federally elected and appointed officials "shall be bound by Oath or Affirmation, to support this Constitution, but no religious Test shall ever be required as a Qualification to any Office or public Trust under

\(^{43}\) Davis, Kenneth C. "America's True History of Religious Tolerance."

\(^{44}\) Davis, Kenneth C. "America's True History of Religious Tolerance."

\(^{45}\) Davis, Kenneth C. "America's True History of Religious Tolerance."
the United States.” Knowing all too well the dangers of a country divided by religion and run by the head of the church, Washington, Madison, Jefferson and Adams fought to ensure that America would be a tolerant republic by including principles of religious freedom in the founding document of the nation.

However, not all were satisfied with the Constitution’s ability to protect individual liberties of the people. The anti-federalists demanded more. In an effort to appeal to the anti-federalists, Madison introduced a number of amendments that came to be known as the Bill of Rights. It was the Bill of Rights that granted the people of the United States fundamental rights and protections by the government, including the right to practice religion freely. It was in congressional debates that Madison’s ideas were developed into the religion clauses of the First Amendment. In June of 1789 Madison outlined his proposed amendments, “The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed…” His fellow congressmen did not immediately accept his proposed amendments. Mr. Sylvester, one of the congressmen present at the debate in August of 1789 feared the amendment would abolish religion all together. Madison countered that the purpose was to prevent Congress from making laws that would enforce the observation of religion, create a national religion or “compel men to worship god in any manner contrary to their conscience.” The chief concern during the period was protecting the people from government imposition of religion. The idea of restricting practice of religion was not part of the discussion, because no one imagined the

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46 Davis, Kenneth C. “America’s True History of Religious Tolerance.”
48 Wilson, John Frederick, and Donald L. Drakeman, 76.
complexity of a multi-religious country. This distinction between the need to protect the people from the government, versus the need to protect people from the Church, as had been the case in England and in France, is one of the most significant factors in each country's notion of separation of church and state and freedom of religion.

Ultimately Congress recognized the importance of freedom of religion and reached a compromise. The Bill of Rights was ratified in 1791 guaranteeing the people perhaps their most important right, the right to freedom of religion. In addition to the Bill of Rights, President Washington, in a letter to the Hebrew Congregation in Newport, Rhode Island, promised the country full liberty of conscience. The letter reads:

“The Government of the United States gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support. Everyone shall sit in safety under his own vine and figtree, and there shall be none to make him afraid.”

This letter is considered by American historian Melvin Urofsky to be a “treasure of the nation” for its strong call for religious liberty. French politician Alexis de Tocqueville wrote that America had been “born free, unfettered by the religious and social bigotries of medieval Europe.” Tocqueville is correct in highlighting the stark differences between the nations. Though the United States was founded by a group of British Protestants, by the time of the Revolution the nation had become a religious and political haven for many Europeans. Comparatively, in Europe, the anti-clerical French Revolution was just

50 The Story Behind the George Washington Letter to the Hebrew Congregation…
51 The Story Behind the George Washington Letter to the Hebrew Congregation…
52 The Story Behind the George Washington Letter to the Hebrew Congregation…
beginning. Washington recognized the diversity of the nation and it was in this vein that the American motto, *E Pluribus Union- Out of Many, One*, became a symbol of American tolerance and diversity.

Today America continues to known as the land of religious liberty, with the religion clauses of the First Amendment being a cornerstone of this freedom. The First Amendment grants the people the right to freedom of religion, protects individuals from state restriction of religion and protects religions in their own right. This protection is not unique; most Western countries share this conception of religion, however interpretations differ.\(^{53}\) In the United States, civil religion is a common faith.\(^{54}\) More precisely, American civil religion has been defined as, “a set of religious beliefs...shared by most Americans and consistent with the particular theologies of [most American religions]”\(^{55}\). Essentially, American civil religion is a mixture of religious and secular beliefs that dates back to the country’s founding. Civil religion is meant to unite the American people through a shared but separate partnership between the State and the Church. Despite the name American civil religion is not fundamentally religious. In fact, American civil religion developed as the U.S. became less religious, influenced by enlightenment.

As enlightenment ideas disseminated throughout the country the idea of separating Church and State became more palatable. Ten of the fourteen states either disbanded their establishments or stopped enacting policies that supported a state religious establishment.\(^{56}\) This included loosening political limits on dissenting groups. At the national level the first Congress had introduced an amendment that eliminated religious

\(^{53}\) Prélôt, Pierre-Henry, 914.
\(^{54}\) Prélôt, Pierre-Henry, 918.
\(^{55}\) Prélôt, Pierre-Henry, 918.
tests for public office and established separation of Church and State. The Supreme Court first used the term separation of Church and State in 1879, however it was not until the incorporation of the Fourteenth Amendment that the term became a constitutional promise. In the Court’s first Establishment Clause holding Justice Black wrote that the amendment meant:

“Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another [...] No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion [...] In the words of Jefferson, the clause against establishment of religion by law was intended to erect “a wall of separation between Church and State.”

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The rhetoric of the 1946 Everson v. Board of Education decision did not reflect the ultimate holding in which the court ruled in favor of the state, allowing state reimbursement of religious bussing. 58 Conservatives and liberals agreed on the principle of separation of church and state, however they had differing views and understandings when it came into practice. Liberals understood the separation to mean that the government could not maintain a state religion, finance religious activities or coerce action on behalf or against religion. Conservatives understood it to mean that the government had leeway to recognize religious traditions and customs and use them in non-denominational ways as well as

57 Green, Steven K. "The Separation of Church and State in the United States."
58 Ultimately the court held that services like bussing that are “separate and so indisputably marked off from the religious function” and do not violate the First Amendment. (“Everson v. Board of Education of the Township of Ewing.” LII / Legal Information Institute. Cornell University Law School, n.d. Web. 3 Feb. 2017.)
financially assist religious bodies when it benefitted the State. The politicians, who were among the elite Americans, favored the first view, upholding the values of the Constitution. However, subsequent behavior did not echo the principles of the Constitution. The Founders did not anticipate, in 1792, how diverse the U.S. would become. The laws of the Constitution were created with the belief that the U.S. would remain a fairly homogenous society. When a mere twenty years later the population began to diversify, the reality was not that of the Constitution. No one expected the change in religious diversity that would result from surges of immigration of Mormons, Catholics, and Jews, and therefore, when it began the people felt little obligation to uphold the values of the legal framework.

2.2 Popular Reactions and Policy Against Religion and Immigrants

At the beginning of the nineteenth century Americans were no longer committed to preventing discrimination on the basis of religion. The American public did not share the same view as the political elite who believed freedom of religion was a protected right. The country saw a return of intolerance as immigration increased. Violence erupted in the 1830's when a second wave of Irish Catholic immigrants arrived and again in the 1840's following the Irish Potato famine. The Irish that came during this period were poor by American standards and were willing to work for low wages. Many Americans grew to resent them and their unsanitary living conditions that polluted neighborhoods. Age-old tensions between Protestants and Catholics were exacerbated. Protestants burned down Saint Mary's Catholic Church in New York City in 1831. The violence continued across the nation. The 1844 Bible Riots in Philadelphia left twenty dead, two churches burned to the
ground, and homes destroyed. By the 1850’s there was a far more challenging demographic mix than anyone expected, which opened the door to strong anti-immigrant and anti-Catholic sentiments. These tensions ultimately led to the founding of the Nativist American party and the Know-Nothing party.

The Know-Nothing party gained traction in the 1850’s as an anti-immigrant, and anti-Catholic party that targeted non-responsive politicians. The party disliked Catholicism because of its roman hierarchical structure, anti-republican values and its aim to subvert government and curb individual freedom. The Know-Nothings, like the French revolutionaries, felt Catholic values posed a threat to the nation. The Know-Nothings were described as a party that “sprang from the people, not professional politicians” and as a creation of a party of “men outside politics.” The people, guided by bigotry and not fact, felt threatened by Catholicism. By 1850 The Catholic Church was the single largest religious body in America. The presence of the church coupled with fact that 40 percent of second wave immigrants hailed from Ireland incited anger and resentment among nativists. The nativists stressed the disproportionate presence of Irish Catholics who were poor and criminals and sought to limit their political power by spreading anti-immigrant propaganda. The Know-Nothings won several elections on this nativist platform and gained reasonable popularity. When the Republican Party finally superseded them in 1856, they had already incorporated some of the Know-Nothing’s anti-immigrant rhetoric. By absorbing the anti-immigrant gene in the Republican Party, the Republicans were

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61 Levine, Bruce, 456.
eventually branded as the white Protestant party, at least in the South.

To the detriment of the nation, the Republicans had adopted the anti-immigrant rhetoric. The discrimination began to extend to several other groups. In 1924 the U.S. government imposed a policy that would constrain immigration through a quota system and complete ban of Asian immigration. The Act set a two percent national origins quota based on the 1890 U.S. census data and included a provision that excluded entry for any alien based on race or nationality. Driven by the fear that immigrants would not assimilate, politicians imposed these discriminatory laws. The majority of the immigrants targeted through the quota were those who practiced a religion other than Protestant Christianity, such as the Jews, the Chinese, and the Irish Catholic. Religious discrimination was brought to the forefront in the immigration policies of the nineteenth and early twentieth century, and was not corrected until it was challenged in the courts and outlawed by the 1965 Immigration and Nationality Act.63

2.3 U.S. Religious Jurisprudence: Supreme Court Cases

During the latter half of the nineteenth century there arose a tension between official legal principles and popular and political manifestations of bigotry culminating in an effort to have popular impulse embodied in law. Simply put, the right to freedom of religion did not have the full weight of the American people behind it. In addition the Bill of Rights did not yet apply to state law, and as a result several religious minorities lost cases in the Courts.

The Mormons were one such group. The Mormons faced disapproval because their values were in direct opposition to those of the founding nation. In 1862 the Morrill Act made the Mormon practice of plural marriage illegal. This act would provide the basis to convict Reynolds in 1878. In Reynolds v. US, the Supreme Court ruled that the free exercise clause did not guarantee a right to partake in an illegal religious practice. In sum, the court ruled that religious duty is not a sufficient criminal defense. In the case, Reynolds, a Mormon man, was charged with violating the anti-bigamy act. In this landmark decision the Court distinguished between belief and practice, holding that Reynolds had the right to believe what he wanted, but he could not practice as he pleased if that practice violated a criminal law created to protect the public good. The Supreme Court established that the federal government could in some circumstances restrict the religious liberty of the people. The Mormons came under attack because the country felt their values were hostile to the nation, just as the Muslims have today. Though the prohibition of plural marriage was a fairly minor limit on civil liberties, it foreshadowed the future. This was the first of many decisions that gave the state greater control and imposed limits on the civil liberties of the people.

Another indication of the new direction of U.S. jurisprudence was the 1875 Anti-Catholic Blaine Amendment. Though the amendment was short a few votes, it underscored that the majority of Congress was in favor of stricter separation of Church and State. The Amendment, which targeted Catholic parochial schools, stated that no federal funds would be allocated to fund religious schools and that no state could establish a state religion. The courts continued to rule in favor of states often citing public safety as a basis for their decisions.

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decision. One such example was *Jacobson v. Massachusetts* (1905). In *Jacobson*, the Court allowed the state to enforce the requirement of the small pox vaccine despite claims that the vaccine violated some people’s religious beliefs. In *Bradford v. Roberts* (1899) the District of Colombia entered into a contract with a hospital run by Catholic nuns. The contract was upheld because the hospital had no religious purpose and served to provide all people in the community with medical care. The common theme in these cases was deference to the state. Congress continued to enact laws that discriminated on the basis of religion and the courts deferred to the states, evading the promises of the First and Fourteenth Amendments.

However there did begin a movement to reconcile the two facets of freedom of religion. In *Jacobson* the argument made by the plaintiff was discrimination on the basis of religion, in *Bradford*, preference of one religion to another. To reconcile these principles the courts began evaluating a policy of strict separation. The 1946 *Everson v. Board of Education* case coined the term “strict separationist” to describe a favoring of non-establishment of religion. Critics of the term charge that “a separationist perspective imposes a regime of secularism, one that is not neutral toward religious matters but that privatizes and marginalizes religion.” The majority in *Everson* disagreed. In *Everson* the court applied the Establishment Clause to state law through the Due Process Clause of the Fourteenth Amendment. By narrowly applying the law, the court found that the state’s

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funding of Catholic school busses did not violate the First Amendment. The critics of strict separation won, and so the urgency for an explicit policy of strict separation diminished.

Strict separation sought to establish secularism. But secularism did not and has not prevailed in our nation. One reason for this was the Cold War. In the war against the communist soviets, the American people banned together regardless of individual religion to fight atheistic communism. Diane Kirby stated that the Cold War was “a global conflict between the god-fearing and the godless.” The threat to American national security was no longer domestic, and consequently the focus shifted from immigrants and internal religious minorities to foreign threats. The need to destroy the enemy and all that it stood for enhanced religious pluralism and multiculturalism within the United States.

The move towards religious tolerance was further emphasized by the response to the holocaust. As a reaction to the Nazi genocide and the Americans’ guilt for intervening too late, there began a decline in anti-Semitism in the 1940's. This combined with invocations of “Judeo-Christian” partnership minimized the differences between the two religions and helped to include Judaism as part of the common faith of Americans. In 1963 the Supreme Court ruled in favor a Jewish woman who had argued that her place of work had violated the First Amendment by denying her unemployment benefits for refusing to work on the Sabbath. In this case, Sherbert v. Verner the court ruled for the individual and for religious liberty. This period of religious pluralism cultivated a new American spirit more inclusive of religion, at least on the surface.

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The inclusive spirit did not last long. The 1980’s and 1990’s saw an eruption of conflict between the U.S. and Islam marked by U.S. involvement in the Iran-Iraq war, the rise of the Nation of Islam and acts of terror committed by Muslim radicals. These events led the U.S. to be cautious of Islam and those who identified as Muslim. This period from 1980 to 2010 will be explored at length in chapter four and will analyze how the U.S. dealt with the threat of Islam and the need to protect the right to religious freedom.

The United States and France, as detailed in the first two chapters, place different emphasis on freedom of religion and religious expression. The paradox being while both countries have established freedom of religion as a founding principle, the outcome has been dissimilar at every turn. The United States did not encounter the same difficulty as the French did of clashing with one already established religious institution, instead religious groups within the country clashed, exacerbated by high rates of immigration. France on the other hand went through an anti-clerical revolution and, struggling to emancipate government and religion, developed a regime of secularism. What both countries do share, though, is this threat to their national identity and public order that causes them to tighten laws against religious freedom. The French manifestation of this fear is more pronounced today though it has only been realized in the policy of the last fifty years, whereas anti-religious policy has pervaded American society since its founding, but was thought to have been reconciled after the issues with the Catholics.

The next chapter will explore the French concept of laïcité and how it has been used to manipulate French policy and limit religious practices that the non-Muslim French identify as a threat.
CHAPTER 3: FREEDOM OF RELIGION V. LAÏCITÉ IN MODERN DAY FRANCE

As we have now seen, the French and the Americans view freedom of religion in different if not opposing ways. While the French set out to create a secular nation, America was in the process of creating a multi-religious one. This chapter will attempt to reconcile laws enacted and actions taken by the French government that appear to privilege Christianity over Islam, and target the religious freedom of the growing Muslim population.\(^73\)

3.1 The Start of Unfair Application of Laïcité

There is a widespread belief, on the left, among Muslims and among advocates of civil liberties that the laws of laïcité have been unfairly applied to the Muslim population. This notion is not unsupported. Several events in recent history provide evidence of unfair application. In 1996 Pope John Paul II visited the city of Tours to commemorate the baptism of the founder of France, the Frankish King Clovis.\(^74\) The state financed his trip despite the direct order of the 1905 law that the government shall not fund religious events. President Chirac justified the action arguing that the Pope was the leader of the Vatican state and the spiritual leader of the French people. The government’s nonchalance in making exemptions for Catholic leaders contradicts the principle of laïcité, and is one of many government actions that showed deference to Christian religions.

The frenzied debate over Islam and religious symbols began around 1990. Between 1950 and 1989 many of France’s colonies gained independence, which drove a flow of Muslim immigration to France. By 1989, the Muslim population of France had

\(^73\) Refer to the Appendix (pg 102) for data on the Muslim population of France.
grown considerably, producing stronger anti-Muslim sentiments. In 1950 there was a Muslim population of 230,000 and by 1980 the number had grown to 2.5 million.\textsuperscript{75} In addition to the significant growth, Muslims had settled disproportionately around Paris making their presence far more apparent and stimulating a debate about their place in French society. \textsuperscript{76}

It was during this time that perhaps the best-known example to date of unfair application of the principles of \textit{laïcité} occurred. In what became known as \textit{L’Affaire du foulard}, also often referred to as the 1989 headscarf case, the principal of a middle school in Creil, a suburb of Paris, expelled three teenage girls for refusing to take off their headscarves. Though he justified the action by stating the expulsion was done “in the name of respect for \textit{laïcité},”\textsuperscript{77} his comments after the fact are far more telling of his motivations. The principal said, “the veils are a strategy to Islamify the young Arabs of Creil.”\textsuperscript{78} His remarks articulated the strong Islamophobia beginning to spread across France. Left-wing opponents pointed out “it is curious indeed to expel girls from public schools in the name of “integrating” them more fully into French society,”\textsuperscript{79} highlighting the duplicity of the expulsion.

The case garnered national media attention and split the country between the supporters of “open \textit{laïcité}” and the fierce guardians of “French” identity. Supporters of the expulsion argued that the veils violated the rules of secularism and imposed religious ideas

\textsuperscript{78} Dryef, Zineb. "Le jour où la France s’est divisée sur le foulard."
\textsuperscript{79} Dryef, Zineb. "Le jour où la France s’est divisée sur le foulard."
on the students at the school. They also made the argument that from a feminist perceptive the ban was beneficial policy that would protect girls from being forced to wear the veils by the patriarchal religion of Islam. This argument was invalidated when the father of two expelled sisters assured the press that he did not require the girls to be veiled, and when the girls themselves reiterated that they had made the decision to be veiled on their own.

Then, after weeks of media frenzy, a government official finally spoke up. Lionel Jospin, then Minister of Education, stated that while students must “respect laïcité by not wearing ostentatious religious symbols,” education comes first, and “schools exist to welcome students not to exclude them.”

His comments generated a firestorm of criticism from his own party, the right, and the media, all of which accused him of favoring the Muslim community. Throughout the affaire President Mitterrand remained silent, passing the decision on to the Conseil d’État, the highest administrative jurisdiction in France that advises and judges the executive. Three months later, on November 27, the Conseil d’État presented its opinion: Students who wear religious symbols are not automatically violating the principle of laïcité, and therefore the directors of schools can make decisions on a case by case basis. The ruling seemed to favor the girls, but because the case left the ultimate interpretation and implementation to principals and local schools boards, it left room for individual prejudice. The most important outcome of the case was that the Court had determined the policy itself was valid. Its constitutionality would depend on the situation.

In the years after the decision, the Conseil Constitutionel (Supreme Court) heard many similar cases, often ruling in favor of students’ right to wear the religious garb. In fact, between 1992 and 1999 the court upheld students’ rights to wear headscarves in 84

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80 Dryef, Zineb. "Le jour où la France s’est divisée sur le foulard."
percent of cases. The cases were about more than religious rights, they brought four main issues to the forefront: “the role of secularism in the public school system; women’s rights; the spectre of a fundamentalist, aggressive Islam proselytising France; and the integration of North Africans and other non-European immigrants.” Danielle Mitterrand, wife of President Mitterrand, reprimanded the country for being unwilling to accept religions other than Christianity 200 years after the Revolution. The political climate of France did play a significant role in the French reluctance to accept the Muslim immigrant community. Several events caused the French people to be wary of Muslims. A wave of terrorist bombings hit Paris in September of 1986; three French hostages were taken in Beirut, Lebanon in 1986, and relations with Iran were far from amiable. The headscarf came to be a symbol of Islamic danger to the French Republic. These tensions though temporarily resolved with the judgment of the Conseil d’État, were far from laid to rest.

3.2 The 2004 Act on Religious Symbols a.k.a. The Headscarf Ban

The debate on headscarves and Islam has remained a salient topic in French politics, complicated by a growing awareness of the Muslim population. In the name of laïcité and neutrality France does not gather religious data on its population. However many estimates have been made that 7 to 8 percent of the French population is Muslim, making France home to the largest Muslim population in Europe. The size of the Muslim population has not gone unnoticed; in 1999 a survey found that 51 percent of the French population felt

81 Bellar, Elisa T., 584.
82 Bellar, Elisa T., 586.
83 Bellar, Elisa T., 583.
there were too many Arabs in the country. This sentiment not only continued into 2003, but grew and re-emerged more openly towards Islam, with 73 percent supporting the headscarf ban. In response to rising anti-Muslim sentiment, President Chirac appointed the Stasi Commission to investigate how to adapt laïcité to the modern and drastically different French nation, and address best practices concerning the headscarf in schools.

In 2003 the Stasi Commission recommended a headscarf ban in schools; this was passed by parliament in 2004 by a vote of 593-36 with 31 abstentions. The law prohibits the wearing of “ostentatious” religious symbols in schools and if violated leaves disciplinary decisions up to local school boards. The vagueness of the term “ostentatious” was not accidental. The French Parliament knew that the European Court of Human Rights would rule that a complete ban on religious symbols was restrictive to religious freedom. The French Parliament therefore made a calculated decision when choosing the language (particularly the word “ostentatious”) of the ban that would enable them to target wearers of the Islamic veil.

Another problem, among many, was the ease with which Parliament was able to enact a law that on its face appeared discriminatory. The problem was institutional. Prior to 2008 the only parties able to request a constitutional review of a law were high-ranking party members such as the president of the republic, the prime minister, the president of the national assembly or the one of the sixty senators. The people had no outlet to protest nor to call into question what they felt was unjust legislation, and no government official felt inclined to refer the Act of 2004 to the Conseil d’État to have its constitutionality determined. The duplicity is unsurprising considering that there was not a single Muslim

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86 Bell, David A. "Veil of Tears: A Review of "Why the French Don’t Like Headscarves: Islam, the State and Public Space".
87 Britton D. Davis, 124.
government official in 2004, and that the majority of parliament consisted of white Christian males.\textsuperscript{88} The government seems to forget that \textit{laïcité} was developed to protect the state from religious conflict, yet the ban has instead entrenched the division between the Muslims and the “French.”

The headscarf affair was for many French Muslims a confirmation of their status as outsiders, “pushing them towards a more radical Islam that is less accommodating with life in the late twentieth century.”\textsuperscript{89} After the law passed many Muslim girls began wearing black headscarves in place of the more common colorful scarves, and journalists facetiously asked whether schools would soon ban silk scarves from Hermès.

A less well-known outcome of the law was the effect it had on turban wearing Sikh boys and the government’s response. The small Sikh minority of France had never been viewed as a threat to \textit{laïcité} and as a result the government did not consider implications of the law on non-threatening Sikhs. When the Ministry of Education eventually realized that the wearing of Sikh turbans also violated the law, it quietly offered to pay full tuition for the Sikhs at private schools. The Ministry of Education’s devious actions to aid only the Sikhs made the ultimate purpose of the ban blatantly obvious: the ban was created to assuage the public and send the symbolic message that France would fight against the dangers of Islam.

In conclusion, the headscarves for many of the non-Muslim French represent the general refusal of Muslim immigrants to integrate into society, as well as their participation in international terrorism, urban violence, and the oppression of women. Ultimately, the French public saw the ban as a protection against the growing influence of Islam.


Unfortunately, the government failed to acknowledge the casualties of the ban. The majority of the girls affected were French born and relatively non-religious. One example is Schérazade, a young Muslim girl who did not regularly wear the veil, but decided to risk expulsion and don the veil her senior year of high school. For her this was an act of protest against the restrictive, discriminatory, and racist French government who was limiting her right to religious freedom. This is one girl but the larger picture paints the same story. The ban has caused over 60,000 students to drop out of public schools each year. It tells Muslim girls who have grown up in France and consider themselves French that their religion conflicts with their ability to ever be fully French. It tells them French society rejects them. And yet, the government has attempted to rationalize the ban in the name of neutrality and respect for all religions.

### 3.3 Rationalizing the Ban

Despite worldwide agreement that the headscarf ban unjustly affects Muslims, the French government has tried to argue that its implementation was done in the name of respect for all religions. Nicolas Sarkozy, French president from 2007 to 2012, addressed the dispute on laïcité in a 2009 speech, asserting that, “the problem of the burka is not religious problem, it’s a problem of liberty. It is not a religious symbol, it’s a symbol of enslavement, it’s a symbol of humiliation.” He then continued, “I want to say solemnly, it will not be welcome on French soil.” Sarkozy believes that a laïc ban is the solution, claiming that laïcité “is the respect of all [religious] opinions and all beliefs.” His comments when analyzed in conjunction are almost comical. Sarkozy’s statements are

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contradictory: the ban does not target one religion but also the burka is not welcome on French soil. Though the burka, the full body veil with a mesh cover for the eyes and the niqab the full-face veil which leaves a slit for the eyes, do for much of the world symbolize the oppression of women, it is hard to understand how a ban of it is not religious discrimination. Nevertheless, the majority of the French agreed with Sarkozy's statements, for one of two reasons. A teacher in a Muslim banlieue of Paris discussed the arguments made in the laws that eliminated religious teaching in schools in 1881 with her class. The class found the same arguments were made regarding the 2004 debate on the veil. She said her students were moved when they realized it “wasn’t just something against Islam, that it comes out of a tradition.”

Many French people believe that the headscarf ban is necessary to promote laïcité and equality. The other group agrees with Sarkozy for a less noble reason: because they see headscarves as being just a step removed from suicide bombs, especially after September 11 and the bombings in Madrid and London. The danger of violent radical Islam may exist, but it is not clear how the headscarf ban in schools and the limit on religious liberty will have any effect in reducing any legitimate threat. Nonetheless, the French continued to expand the ban, in 2011 banning full-face veils in public spaces placing a restriction on attire that many Muslims consider a religious obligation.

3.4 S.A.S. V. FRANCE
The headscarf cases came to epitomize the national debate on immigration, security and religious identity. As the Muslim population grew, especially around the country’s capital where the percent of Muslims had reached fifteen compared to the national average of seven percent, the French felt increasingly threatened. The perceived change caused by

the new and growing Muslim population caused the French to feel as though they were losing a part of their national identity and that their national security was at risk. President Sarkozy's 2009 remarks reflected this fear and sparked Parliament to dive deeper into the burka dilemma.

In 2010, a parliamentary commission comprised of thirty-two members reached the conclusion that the burka was incompatible with secularism, and asked parliament to adopt a resolution that would require women to keep their faces uncovered when receiving public services. Within a year parliament passed a law that banned the covering of the face (outlawing the wearing of the niqab and burka) in all public places, with support from the French government and many mainstream Muslim organizations. France was the first European country to outlaw full-face veils. One group that stood in strong opposition to the law was French police. Police unions did not support the ban arguing it would be very difficult to enforce and could create riots. Other critics sought to point out the law’s unproductiveness. When the law went into effect it was estimated there were about five million Muslims in France and that about 2,000 wore the full-face veil. Oliver Roy, an expert on political Islam, questioned, "Why target something which in fact is an exception and only concerns hundreds of women - most of them converts in France? It's not a movement of support for the burka, but a feeling of discrimination." The discriminatory aspect is hard to ignore. Furthermore, the penalties of the law seek to punish the men who the French Government says force women to be veiled. In general terms the law states that a person

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may not wear a veil in public space, and that if worn she may be asked to remove it. If the wearer of the veil does not comply she will be fined approximately 130 euros or jailed, and even if she complies and removes the veil she will be subject to a public hearing. For anyone who forces another person to wear a veil the penalty is far harsher, resulting in one year of jail time and a 30,000 euro fine.97 The difference in the severity of punishment between men and women who violate the law reflects the opinion of the French policymakers who believe they are saving Muslim women from oppression. However, not everyone agreed with this view or the constitutionality of the law, which led to the famous 2011 S.A.S. v. France case.

The law outlawing full-face coverings was quickly called into question for violating the right to freedom of religion and free expression. Muslims and supporters of religious freedom resisted the policy. The same day the law went into force in April of 2011, a 24-year-old devout Muslim French woman filed an application with the European Court of Human Rights (ECtHR) declaring that the law was a violation of her rights. The woman who allowed the court to disclose only her initials is known as S.A.S. In her application S.A.S. emphasized that free from pressure she had chosen to wear the veil and that she did not wear the veil at all times, only when she felt it was necessary to express her religion and her personal and cultural faith, for example during Ramadan. Plainly put, the ban on veils in public places constrains the freedom of women who wear veils or who may want to wear veils in the future. With those details in mind S.A.S. argued that the law violated: article 9 (freedom of religion), article 10 (freedom of expression), article 8 (privacy), article

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14 (freedom from discrimination), article 3 (non-subjection to degrading treatment) and article 11 (freedom of assembly) of the European Declaration of Human Rights.

The court found several of the claims inadmissible and decided to investigate solely on the basis of the right to freedom of religion and the right to privacy. The law was upheld with fifteen of seventeen judges finding the burka ban necessary in a democratic society to protect the rights and freedom of others. The French attribute great importance to the deciding principle of “vivre ensemble” (living together). This argument of “living together” is inherently biased. It favors assimilation in the tug of war between assimilation and multiculturalism. The two dissenting judges in the case found the concept of “living together” problematic, stating that the ban makes a “mockery of freedom of expression... and the right to identity or personality.”98 Their opinions echo those of advocates of civil liberties who agree that the ban leads France and the ECtHR down a slippery slope where the majority has the ability to reject forms of expression it does not identify with. The court itself said there was a “resulting risk of abuse.”99 The dangers seem difficult to reconcile, but as Josh A. Bowen explains, “The Republic is based not on a shared faith, but on a faith in the possibilities of sharing a life together, despite vast differences in appearance, history, and religious ideas.”100 Even if this is true, there comes a point when the French must evaluate if they have tipped the balance between the values of living together and those of a democratic society such as pluralism, individualism and

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multiculturalism. The S.A.S. decision tipped the scale again in the wrong direction threatening the religious liberties of the French people, primarily those of Muslims.

The decision also highlighted the differences between the French and U.S. legal frameworks. In S.A.S. v. France the court said it was unable to find a European consensus as to whether there should be a blanket ban of the full-face veil in France. This was despite the fact that only two out of 47 countries have chosen to impose a ban, suggesting there is in fact consensus. This led the court to adopt a wide margin of appreciation to French authorities and therefore find a non-violation of Article 9 [right to religious freedom].

When determining if the ban violated Article 9’s, the ECtHR considered four questions:

1) Was there a limitation of the freedom to manifest religion?
2) Was the limitation prescribed by law?
3) Was it necessary in a democratic society to protect the public?
4) Was the limit proportional to the goal?

These questions favor the government and put an emphasis on the burden to society. In the U.S. claims of violation of religious freedom are weighted against three questions:

1) Is there a substantial burden imposed on the plaintiff?
2) Was the burden in the government’s compelling interest?
3) Was the burden the least restrictive means?101

These three questions, though similar to the French standard, project a stricter view of a reasonable burden and favor the individual making the claim. The difference in legal framework between the U.S. and the ECtHR, which defers to policy of the country against

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who a claim is made, explains why France has passed a law that would by U.S. standards be considered a form of religious discrimination.

Luckily for the Muslim population and for the more open-minded French people, the reversal of the 2016 burkini ban marked a welcome shift, tipping the balance in favor of religious rights for the individual. It also marked the newfound policy of the court that acknowledged and decided that anxieties over terrorism should not motivate policymaking. Those cases will be examined in detail in chapter 5 to provide a comparative analysis. The next chapter will examine how the United States has handled discrepancies of the right to religious freedom in the last fifty years.
CHAPTER 4: COMBATING ISLAM IN THE UNITED STATES AND DISPUTES OVER THE RIGHT TO RELIGIOUS FREEDOM

In France the challenge of balancing Islam and religious freedom has been manifested primarily through the debate on legislation outlawing headscarves. In the United States the approach to regulating Islam and displays of Islam has been far more varied. The second chapter set up the paradigm of religious freedom from English settlement to the 1980’s. This chapter will cover the period in the U.S. (1980 to 2009) that saw a rise of Islamophobia. This period was characterized by hostage crises, terrorist bombings, and conflict in the Middle East, which resulted in the demand by Americans for policies that restrict civil liberties and treat the Muslim population as a threat. Next, the chapter will examine the period from 2010 to 2015, during which there was a shift in the American political regime of open hostility towards Muslims and examine the ensuing limits on religious freedom. Finally, this chapter will analyze how the U.S. has dealt with the challenge of maintaining public safety or national security while balancing the right to religious liberty.102

4.1 Instilling Fear: Terror and Conflict in the Middle East

An American in 1979 turns on the radio and hears about the anti-western Islamic revolution in Iran and the capture in Iran of 52 American hostages. The violence continues into 1983 when U.S. embassy in Kuwait, and Marine barracks in Beirut, are bombed, all of these acts carried out by Islamic militant groups. Throughout the country this raised anti-Islamic sentiments and fear of Muslims that had lain dormant for years.103 Closer to home,

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102 Refer to the Appendix (pg 102) for data on the Muslim population of the U.S.
103 Islamophobia has been present since the country’s founding. The Ottoman Wars created fear of Muslims back then. Though the fear has lain dormant, feelings of islamophobia have remained in the cultural background. So when the Iranian revolution broke out, Americans, who knew nothing about Iran but did
the Nation of Islam was crumbling as result of its reputation as a violent Black Nationalist organization. Though most Muslims do not consider the Nation of Islam to be representative of true Islam, and instead consider the Nation’s beliefs contrary to those of Islam, the American public found another reason to disapprove of the religion. A decade later in 1993 a group of Islamic extremists attempted to bomb the World Trade Center. These events stirred anti-Muslim sentiments.

4.2 Effects of 9/11: An attack on Civil Liberties

If the anti-Muslim sentiment of the 1980’s and 90’s seemed strong, after 2001 it grew exponentially in public opinion. The September 11, 2001, terror attacks were the event that most drastically changed the course for Muslims in America. The bombings, carried out by extremists in the name of Islam, created a fierce anti-Muslim campaign across America. This campaign of anti-Muslim sentiment, unlike after 2010, was not evidenced in religious policy but in privacy policy. It caused many Americans throughout the nation to question, hate and fear Muslims. One measurable manifestation of the fear was the 1600 percent increase (28 to 481) in anti-Muslim hate crimes following the September 11 attacks as reported by the FBI.104 Muslim American associations denounced the attacks and tried to reassure their American friends and neighbors that the perpetrators of the horrific attack were not true Muslims but were radical extremists who had perverted their religion. They flew American flags as a sign of support and invited America to learn more about Islam. Some Muslims and Americans took the opportunity to

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learn and write about Islam, but unfortunately many more anti-Muslim individuals distorted the truth and spread myths and bigotry vilifying all Muslims.

The culmination of the anxiety brought on by 9/11 was the 2001 Patriot Act. Passed just 45 days after the September 11th attacks, the Patriot Act made changes to surveillance laws allowing the government to spy on Americans, listen to phone calls, monitor email, collect bank information, and track internet movement. Its passage begged an important policy question: were Americans willing to give up their civil liberties in the name of national security? The answer was yes, 64 percent polled approved of the law. In Washington, politicians agreed. The Patriot Act passed by a vote of 98 to 1 in the Senate and 357 to 66 in the House. The 67 constitutional defenders had lost out. Many Americans saw this legislation as an appropriate reaction to the worst terror attack to happen on U.S. soil. Others saw this as a dangerous restriction of civil liberties that would allow the government to encroach on the lives of millions of innocent Americans. One purpose of the Act was to allow the FBI to grant National Security Letters in place of traditional search warrants issued by judges. These NSL’s were far easier to obtain with less evidence than needed for a traditional warrant, prompting miscarriages of justice. The FBI issued 192,499 NSL’s between 2003 and 2005 with only one leading to a terror related conviction.

Another aspect of the law was the “sneak and search” component that enabled federal law enforcement agencies to search property without giving notice to the owner until weeks later. Of these searches less than one percent ended up being terror related. It

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also happened that a large portion of Americans monitored were of Muslim faith or had ties to Muslim majority Arab countries. Take for example Ben Kahla, an American with aspirations of being a diplomat who was studying at University in Saudi Arabia when the FBI arrested him. The FBI had Kahla “shackled, blindfolded and dressed in a Guantanamo-orange jumpsuit before being driven to jail in Washington under full police escort” where they held him for a month, accused of having links to the “Virginia jihad” and indicted him on three separate occasions even after receiving the first not-guilty verdict. 108 The Government and FBI made the argument that in order to protect American citizens they needed to be able to monitor them more closely. They also argued that this temporary infringement on the rights of American citizens would help federal law enforcement to catch terrorists. The data shows this was untrue. Instead the United States compromised its core values and unfairly applied the law on its Muslim population. The tactics of the Patriot Act and the torture of Muslim prisoners at Abu Ghraib and Guantanamo including intentional mishandlings of the Quran, not only tarnished the reputation of America abroad but inflamed anti-American sentiments creating the potential for more terror attacks on U.S. soil.

The actions brought by the Patriot Act, though invasive and contrary to American values and promises of individual freedom, were not illegal. The actions taken by the NYPD to survey Muslim communities, including student associations, mosques, businesses, community leaders and individuals, were. The intelligence division of the NYPD illegally monitored and watched Muslim communities in the New York Area and even communities more than 100 miles away in Pennsylvania, Connecticut and New Jersey. Just reading the

name of the report, “Radicalization in the West: The Homegrown Threat,” it becomes clear that the investigation was created under the pretense that Muslims pose a risk to U.S. national security. The report treats anyone with ties to Islam as suspicious and monitors people in Muslim communities regardless of any wrongdoing or probable cause. This illegal investigation began in 2002 but continued into 2006 and 2007 when officers even went to college and university campuses where they infiltrated Muslim Student Associations hoping to find students with ties to terror cells. They came up empty handed. This illegal practice has been going on since the 1980's. Though this 2006 breach of civil liberties did not constitute a restriction of religious freedom, the students and communities monitored felt the effects in their ability to practice freely and free from worry. The witch-hunt for terrorists in Muslim communities based on the unfounded relationship between those who practiced Islam and those who were potential terrorists had significant consequences for American Muslims. Many no longer felt safe or welcomed in their own country. The spiral of Islamophobia did not end there.

4.3 Limits on Religious Freedom

The September 11th attacks had another effect on Muslims in America; it began the short-lived debate on headscarves. Several of the hijackers had obtained Florida driver’s licenses prompting the Florida Department of Highway Safety to review its driver’s license system. The Miami Herald reported on the issue in an article entitled “Tighter Security May...
Mean More Strict Driver’s License Rules.”111 The requirement to remove headscarves for photo identification appeared to have been implemented in good faith. There was a legitimate security threat and the most practical solution was to implement a policy that would allow for more careful and precise identification. However, Sultaana Freeman did not agree, and with the help of the ACLU she filed a claim in January of 2002 expressing that Florida had violated her right to religious free exercise. The suit was heard before Judge Thorpe in Florida’s circuit court. Judge Thorpe ruled that the demand to lift the veil did not pose a substantial burden to Freeman’s religious liberty, and furthermore that the State’s need to identify drivers outweighed her need to wear the veil. The media were not shy in voicing support for the State. Journalists insulted Freeman labeling her as an extremist who was acting foolishly. The media ignored the fact that several similar cases had been decided in favor of the plaintiff and his or her right to religious exercise. This limit on the civil liberties of one Muslim woman was one case of many that highlighted the newfound sense of anxiety towards Muslims who were thought to threaten national security. However, unlike in France the headscarf issue did not surpass the question of drivers’ licenses and identification photos.

This case is fascinating for another reason: it is one of the few decided in a similar vein to the French headscarf cases. Judge Thorpe found that Florida’s demand that Freeman remove the veil did not pose a significant burden to her right religious exercise. Furthermore, Jay Vail a Florida Assistant Attorney General, in a statement that could have been taken right out of the French headscarf decisions, said, “When there is a matter of common interest that promotes public safety, then we must yield on our right to free

exercise to the extent that it’s necessary to secure that public safety interest.”

This decision picks up on the French ideals of “living together” which were used to justify the headscarf ban in *SAS v. France.* This rhetoric did not gain traction in the U.S. but has gained traction in Europe. In a March 2017 article published in the *UK Spectator,* a European Muslim woman, Qanta Ahmed, advocated for a ban on veils. She believes that the ban is actually good for everyone, including Muslims. She pointed out that “There’s nothing from the early Islamic period about what the khimar — or veil — should cover, whether face, body or hair. The Quran, in Sura 24:31, reminds Muslim women simply of the need to ‘draw...[it] over their bosoms’. While this information is important, she misses the point. It does not matter whether the Quran explicitly requires wearing of the veil, what matters is that if a person feels a strong commitment to adopt a certain religious practice they feel is central to their religion, they should have the right to do so. However this has not always been the case.

The U.S. has not always supported religious exemption and accommodation. In fact in the 1990 Smith decision the Supreme Court held that although the government has the power to accommodate religious practice and beliefs, it is not required to when the practice or belief is in breach of the law. In the 1990 landmark Supreme Court decision, the Court heard the arguments of the Employment Division of Oregon, who argued it did not have to pay the unemployment benefits of Smith who had been fired for smoking peyote during a religious ceremony. The court ruled that because peyote was illegal even for

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sacramental use under state law, the Unemployment Division was justified in denying the benefits. The Court explained that it has never held that an individuals’ religious beliefs excuse him/her from complying with an otherwise valid law. The court explained that a ruling like that could lead to a private right to ignore generally applicable laws creating a constitutional anomaly that would be hard to uphold. By granting deference to the state this decision marked a move away from a policy of more open religious freedom to a more restrictive policy of religious freedom. Nevertheless, the precedent established in Smith did not last very long.

4.4 An Era of Religious Based Legislation

In response to the Smith decision, Congress nearly unanimously passed the Religious Freedom Restoration Act, which President Clinton signed into law in 1993. RFRA states that “government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability,” unless the restriction is “in furtherance of a compelling governmental interest” and is “the least restrictive means of furthering that compelling interest.”\(^\text{115}\) The creator of the law felt that “the compelling interest test as set forth in prior Federal court rulings is a workable test for striking sensible balances between religious liberty and competing prior governmental interests.”\(^\text{116}\) The compelling interest test comes from Sherbert v. Verner (1963). The test was described as: “if a person claimed a sincere religious belief, and a government action placed a substantial burden on that belief, the government needed to prove a compelling

\(^{115}\) Cismas, Ioana, and Stacy N. Cammarano.

state interest, and that it pursued that action in the least burdensome way." With RFRA in place Congress hoped the American people would be secure in their right to religious freedom and practice.

The victory granted by the passage of RFRA was in some ways short lived. In *Boerne v. Flores* (1997) the Supreme Court struck down RFRA as unconstitutional arguing that congress had overstepped its bounds. Archbishop Flores had brought suit against the city of Boerne, Texas for refusing to give him a permit to build a church. The facts of the case are insignificant; the basis for ruling was the constitutionality of RFRA, and the Court stated Congress did not have the power under the Fourteenth Amendment to apply RFRA to the states and their local ordinances. This led in 2000 to the creation of yet another law: The Religious Land Use and Incarcerated Persons Act (RLUIPA). Like RFRA, RLUIPA was passed unanimously and with the full support of President Clinton. In 2000, the country was committed to protecting religious freedom for everyone. The Act was designed to protect religious organizations from discriminatory zoning and land use laws. It bars discrimination based on religion, requires all religious groups to be treated equal to non-religious places of assembly, and obliges the state to provide proof of compelling interest if any zoning or landmark actions impart a substantial burden on a religious group.

Over the last 14 years RLUIPA has helped many Muslims safeguard their right to religious freedom, however when the act was written it was not especially intended to aid Muslims; mosques were hardly mentioned. Prior to 9/11 levels of discrimination towards Muslims remained fairly low. There was no pressing need to create legislation that would protect Muslims. Post 9/11 there was a stark contrast as tensions rose. In 2001 the

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117 Bomboy, Scott. "What is RFRA and why do we care?"
119 Cismas, Ioana, and Stacy N. Cammarano.
Department of Justice investigated 421 hate crimes against Muslims as compared to 28 the year before.\textsuperscript{120} For many American Muslims RLUIPA came at a crucial time.

After the passage of RFRA and RLUIPA, religious zoning issues appeared to be for the most part reconciled between cities and religious groups. In Boston, the Boston Redevelopment Authority with support from Mayor Menino and other City of Boston officials sold the Islamic Society a parcel of land to be used to build a mosque. Though the sale was met with hostility due to the well under-market price the city had given the Islamic Society, the sale went through.\textsuperscript{121} However, resentment grew provoking one Roxbury resident to file a suit against the City and the Islamic Society for violating the constitutional principle of separation of Church and State. To add to the fire, the ownership of the mosque was transferred from an African-American Muslim group to a suburban-based Muslim group with ties to Saudi Arabia and other Middle Eastern countries. This new group, the Islamic Society of Boston, was known for its base of conservative Middle Eastern Muslims and was suspected of having ties to Islamic extremists. In fact multiple members, including ISB’s founder Abdulrahman Alamoudi who was convicted for being an Al Qaeda financier, and the Tsarnaev brothers who carried out the Boston Marathon Bombing, had been found to have ties with Al Qaeda and other Islamic extremist Organizations.\textsuperscript{122}

Nonetheless, the City, perhaps out of fear of appearing Islamophobic or violating RLUIPA, allowed the mosque to be built. The result of the controversy over the mosque of Boston


points to the growing deference to religious organizations after the passage of the RFRA and RLUIPA.

Aside from the residual effects of 9/11, the 2000’s saw few attacks on the religious freedom of Muslims in large part because President Bush kept the Muslim dilemma from becoming a partisan issue. To the contrary, in 2007 the United States elected its first Muslim Congressman, Democrat Keith Ellison of Michigan. A year later in 2008 Andre Carson a Democrat from Indiana was sworn in on Jefferson’s Quran.123 Unfortunately, this period of religious acceptance came to a halt when President Bush left the White House in 2009. Bush had made a conscious effort to keep Islamophobia at bay, but with his departure and the election of a Democratic President, the Republican Party was freed of the responsibility to maintain a welcoming and open front towards Islam. Instead, the Republican Party explicitly expressed hostility towards Islam and framed it as a partisan issue. The year 2010 marked a sad rupture in the American political regime: no longer would both parties be united in protecting religious liberty for all citizens.

4.5 The 2010 Policy Shift: Open Hostility Towards Muslims

After 2010 it became clear that it was not just the Republicans who felt a strong need to control and limit the power of the Muslim population, but so did much of the general population. The latent anti-Muslim sentiment that had surged in the months after 9/11 had re-merged. The shift in politics was reflected in the attitudes of the American people who brought suits against Muslims, burned Qurans and attempted to ban Sharia law. And there’s significant empirical data to support the claim that an ideological and

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attitudinal shift occurred. Pew reports that Muslims had a higher approval rating shortly after 9/11 than in 2010. Data on hate crimes and RLUIPA cases show a dramatic increase in hostility towards Muslims after 2010. Of the forty RLUIPA cases involving mosques or Islamic schools twenty-one were opened after 2010. The Equal Employment Opportunity Commission received a record 803 complaints from Muslim workers in 2009, a figure that is up twenty percent from the previous year. In addition to the increase in sheer number, a report by the Institute for Social Policy and Understanding found that the manner of protest had changed. No longer was opposition to Muslims being voiced in the controlled environments of public sessions and town hall meetings, anti-Islamic groups took their protest to the streets.

The hostility towards Muslims was manifested in the streets of New York. The display of anti-Muslim sentiments expressed in land use controversy over the building of mosques drew national attention, most notably for the so-called Ground Zero Mosque in Lower Manhattan and the Murfreesboro Islamic Center in Tennessee. In both of these cases the opposition resorted to drastic measures. When plans were announced to build a Muslim Community center four blocks from the Ground Zero site ten years after 9/11 there began an emotionally charged debate. At the outset the community board of lower Manhattan approved the construction of the Park51 center agreeing with Daisy Khan, the President of the American Society for Muslim Advancement, that the Islamic center could provide the opportunity to celebrate pluralism and counter the extremist movement. But, as the project attracted media attention, its proponents were accused of being insensitive,

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126 Treene, Eric W.
disrespectful and intolerant towards Muslims. President Obama waded into the controversy declaring, “This is America. And our commitment to religious freedom must be unshakeable. The principle that people of all faiths are welcome in this country and that they will not be treated differently by their government is essential to who we are.”

Ultimately, his words made a tribute to the politicians and preachers of our country who for centuries have sought to create an America that is religiously tolerant. His comments were not enough to convince New Yorkers to allow the project to move forward in the name of religious tolerance, and the project was defeated.

A similar situation ensued in Murfreesboro, Tennessee, but instead resulted in triumph. Proposals to build the mosque were met with vehement disapproval and violence. The Muslim community of Murfreesboro purchased land in an area of Rutherford County zoned for church and mosque building, and placed a sign on the new land that read “Future Site of the Islamic Center of Murfreesboro.” The sign was vandalized with the words “Not Welcome.” A few months later sizable opposition had assembled and a group of several hundred opponents rallied in the Murfreesboro Square to protest the construction. Two months later one of their construction trucks was set on fire in what remains an unsolved arson case. The opposition argued that the Islamic Center had ties to terrorism and that Islam was not a religion but a political ideology. Their most valid claim was that the Center had failed to provide sufficient notice under the Tennessee Open Meetings Act. The Chancery Court ruled in favor of the opposition and ordered the county not to issue a certificate of occupancy. The U.S. then filed a claim under RLUIPA that the denial of the certificate of occupancy violated the Islamic Center’s right to practice their religion and

127 “Davis, Kenneth C. "America’s True History of Religious Tolerance."
128 Treene, Eric W.
thus posed a substantial burden. The federal court ruled in favor of the Islamic Center and the opposition’s subsequent attempts to appeal and reverse the decision were unsuccessful. The case represented a victory both for the Islamic center and for RLUIPA, which had successfully protected a minority religious group from discriminatory zoning laws.

This small victory for religious freedom was set back by a new debate: the banning of Sharia Law in U.S. courts. The comments made in the Murfreesboro case about Islam being an ideology or cult and not a religion inspired several politicians to claim that Muslims had no protections under the First Amendment. Lieutenant Governor of Tennessee Ron Ramsey said, "It’s time for American Muslims who love this country to publicly renounce violent jihadism and to drum those who seek to do America harm out of their faith community." His comment acknowledges that there are American Muslims who love the US, and yet his proposal treats all Muslims as unpatriotic threats to national security. Ramsey was not alone in the quest to ban Sharia law. Over 32 state legislatures have since proposed bills that would limit consideration of religious law in court cases, essentially banning Sharia Law. From 2010 to 2012 six states, Arizona, Kansas, Louisiana, Oklahoma, South Dakota and Tennessee, passed such laws, and another five had restrictions on considering religious law in court. Oklahoma attracted the most attention for its law, which specifically mentioned outlawing Sharia Law in a referendum to amend the state constitution. A federal judge struck down the amendment as unconstitutional on several grounds, for discriminating among religions without compelling state interest, and

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129 Treene, Eric W.
because the amendment did not remedy any identifiable problem. Furthermore, supporters of the law admitted at a public hearing that, “they did not know of even a single instance where an Oklahoma court had applied Sharia law or used the legal precepts of other nations or cultures, let alone that such applications or uses had resulted in concrete problems in Oklahoma.” The lack of knowledge and evidence suggests the obvious; the law was generated by prejudice and fear, and not fact. Despite the victory in court, it was clear that open Islamophobia had been institutionalized.

Public hostility only grew in proceeding years. On the anniversary of 9/11 in 2013 an evangelical pastor in Florida set plans in motion to burn 2,998 Qurans in a public park. This was not Pastor Terry Jones’ first Quran burning. In 2010 he had made plans to burn Qurans but was stopped by a phone call from the Department of Justice. In 2011 he watched while his congregation set fire to Qurans, and in 2012 he himself partook in the burning. Under the First Amendment Jones has the right to symbolic free speech, meaning that though reminiscent of a hate crime, he can burn a Quran. But, Jones was arrested on felony charges for breaking state laws that prohibit the open transportation of fuel. Jones’s actions were detrimental for their role in perpetuating anti-Muslim violence and for the threat his actions posed to U.S. foreign policy and national security.

The country is still struggling to determine whether Americans continue to use national security as a guise for discriminating against Muslims. RFRA and RLUIPA sought to surmount these problems by securing religious freedom for minority groups, and to an extent they have. They have protected the rights of Muslims. Still negative views of Muslims continue to rise. In 2001 only 39 percent of Americans had unfavorable views of Islam, in

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132 Kirckland, Michael. "Under the U.S. Supreme Court: Islamic Law in U.S. Courts."
2011 and 2015 this number was 61 percent. This increase in negative perceptions suggests it is imperative for the government and the courts to protect the right to religious freedom and fight religious discrimination.¹³⁴

Chapter six will explore whether Trump is committed to doing so and will explore what his policy on Islam and National Security may mean for the future. But first, the next chapter will examine the Burkini debate in France and draw out the tension between religious freedom, national identity and national security.

Above is a picture of a burkini, the garment that created an outpour of commotion and reproach the summer of 2016 in coastal France. But what is a burkini and where did it come from? Aheda Zanetti, a 48-year-old Australian designer created the burkini in 2004 in the name of integration and as a way to make Muslim women feel more comfortable on the beach. Since its creation is has become synonymous with any full body beachwear worn by Muslim women inciting an impassioned debate in France on religious freedom.

5.1 The Burkini Debate Begins: August 2016

When a young Muslim girl stepped onto the beach in Cannes, France in a hijab on a warm August day she expected to have a relaxed day enjoying her vacation with her family in her home country of France. A police officer approached her and told her that she had to remove her hijab because per law it was required all people wear “proper dress” at the
beach. This confrontation between a Muslim woman and French police was one of many that occurred during the summer of 2016. Cannes was the first of over 30 French coastal towns to outlaw the burkini in a span of three months.

The made up word burkini quickly became commonplace all over the world as news station after news station began reporting on the ban of the full body swimsuit worn primarily by Muslim women in France. The burkini ban attracted the publics’ attentions for several reasons; it was about feminism and the presence of Islam; it was far reaching and invasive, and because of the timing. The burkini debate came about a two weeks after the Bastille Day terror attack in Nice during which a man claiming allegiance to the Islamic State drove a truck down the main boulevard killing and injuring over 80 men, women and children, and came about three weeks after the murder of a priest by two armed Muslim men St.-Étienne-du-Rouvray, Normandy.

Support for the ban, unlike with the earlier headscarf cases, was not universal in France. Former President Nicolas Sarkozy called the burkini a “'provocation,' a symbol of radical Islam in a country still reeling from the terrorist attacks in Paris last fall and in Nice this July.” Prime Minster Manuel Valls supported the ban, just as he had supported previous legislation restricting religious attire. However, Valls’ clashed with fellow socialist education minister Najat Vallaad-Belkacem, a vocal supporter of women’s rights and critic of the burkini ban who said the ban “let loose verbal racism.” Compared to the 2011 law

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banning veils, which 82 percent of the French supported, support for the burkini ban was far lower with only 60 percent in support of the ban.\textsuperscript{138}

The drama began when Cannes outlawed the burkini. Cannes was the first city to implement an ordinance. David Lisnard, Mayor of Cannes, helped write the ban on the burkini enacted July 28th. The ordinance stated, "Access to beaches and swimming is prohibited from the signing of this decree until 31 August 2016 to any person who is not in proper dress, \textit{respectful of good morals and laïcité}, Hygiene and bathing safety adapted to the maritime public domain."\textsuperscript{139} The phrase "respectful of good morals and \textit{laïcité}" takes a legal principle and narrows its application so that religious attire becomes improper dress. Lisnard tried to persuade the press that the law was not created with the intention of discriminating against Muslims, but few believed his meek attempt to defend the ordinance. Lisnard said, ""Whether a woman is Muslim, Catholic, Jewish or Buddhist, she can of course come and bathe! (...) There are also many Muslim women on the beaches of Cannes. But they cannot wear ostentatious attire."\textsuperscript{140} We see here that just as with the headscarf cases the term ostentatious becomes problematic, and it is easy to question the true intent of the law.

Lisnard then attempted another route of defense, feminism. He claimed, "It is precisely to protect these women that I took this decision. The burkini is the uniform of extremist Islamism, not of the Muslim religion."\textsuperscript{141} Entrenched in French society is the need

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\textsuperscript{139} "Cannes : une femme verbalisée pour le port d’un voile musulman."
\end{flushright}
to control woman’s dress and the necessity to physically demonstrate the difference between men and women while declaring their equality. The evidence of this dates back to the French Revolution. Eugène Delacroix’s famous painting “Liberty Leading the People” shows a bare breasted Marianne leading the French people.\textsuperscript{142} The painting demonstrates the tension in French republicanism between the promise of equality and the natural differentiation between the sexes. French society’s demand that women undress results from its civil religion of secularism. Muslim society essentially rejects this idea by requiring women to be covered, and the French find that intolerable.

Another facet of the debate derived from security concerns. Lisnard makes mention of the need to maintain public order “while France and places of worship are the target of terrorist acts.”\textsuperscript{143} Because the law particularly targets Muslim women, Lisnard was paradoxically caught claiming that the law both protects women and treats them as security threats.

Several anti-Islamophobic organizations tried to draw out this paradox. The politicians in support of the ban left out a few essential facts. The Collective Against Islamophobia asked in a statement, “Must we remind this mayor that about 30 of the victims of the attack in Nice were Muslims, because terrorism targets us all indiscriminately?”\textsuperscript{144} The burkini ban, like the bans before it, was what Feiza Ben Mohamed, a spokeswoman for a Muslim association in the south of France, called a haphazard way for “politicians to hide their inability to handle security in the face of

\textsuperscript{143} Blaise, Aurelien Breeden and Lilia. "Cannes, Citing Security Risks, Bans Full-Body."
\textsuperscript{144} Blaise, Aurelien Breeden and Lilia. "Cannes, Citing Security Risks, Bans Full-Body."
terrorism.” Another perceptive young Muslim woman articulated the danger of the burkini and framed the ban as a question of individual freedom begging the question how far will the French go to check whether an outfit conforms to “good manners”. She expressed that the bans had unleashed a wave of verbal racism. While she acknowledged increased tension as a consequence of the recent terror attacks claimed by the Islamic State, she believes “we shouldn't add oil to the fire' by banning burkinis”. The French Courts agreed.

5.2 France’s Highest Court Rules Against the Burkini Ban

On August 25, 2016 France’s highest administrative court heard the case of the burkini ban. This came after an appeal by the Human Rights League challenging the courts decision in the town of Villeneuve-Loubet located just West of Nice to uphold the ban. The lower court judge had agreed that the ban was “necessary, appropriate and proportionate” to protect prevent public disorder because the burkini was “liable to offend the religious convictions or (religious) non-convictions of other users of the beach.” Apparently many of the French agreed. BBC reported that recent polls indicate that 64 percent of the French public supported the ban and that another 30 percent had no opinion. So what led the higher court to reach a different conclusion? And was it a departure from previous rulings? The Conseil d’État found that ”The contested decree has ... inflicted a serious and manifestly unlawful interference with the fundamental freedoms of freedom of movement, freedom of

conscience and personal liberty" and furthermore that "the emotion and the fears resulting from the terrorist attacks, and in particular those committed in Nice on last July 14, can not suffice to legally justify the contested prohibition measure." It is interesting and surprising that the court found this law to interfere with individual freedom while the headscarf bans did not. Perhaps it is because the burkini reassembles a full body swimsuit and is not clearly associated with Islam. Another explanation: in light of the recent terror attack the court was able to distinguish between a perceived threat to public order and an actual security threat.

5.3 The Need for Integration: Balancing Islam and laïcité

The outburst surrounding the burkini highlights the bigger issue of balancing religious freedom in a laïc country. The fact is French republican values clash with those of Muslim immigrants, exacerbating relations between the majority white, nominally Catholic Frenchmen and the Muslim immigrant community. Today the French find they have created a vicious cycle: the lack of integration and perceived threat of the Muslim community brought on by terrorism leads the French government to restrict the religious liberty of Muslim residents of France, and in turn causes them to turn away and isolate themselves. Further, this pattern led Muslim immigrants to settle in homogenous communities often associated with higher rates of poverty and violence.

149 Original quotes:
« l’arrêté litigieux a (...) porté une atteinte grave et manifestement illégale aux libertés fondamentales que sont la liberté d’aller et venir, la liberté de conscience et la liberté personnelle ».
« l’émotion et les inquiétudes résultant des attentats terroristes, et notamment de celui commis à Nice le 14 juillet dernier, ne sauraient suffire à justifier légalement la mesure d’interdiction contestée ».

The lack of integration of Muslim immigrant communities is a direct response to the hostility they encounter from the native French. The hostility is evident not only in the legislation aimed at restricting the religious expression of Muslims, but it is also evident on a micro or individual level. The 1990’s showed much higher unemployment rates among young Arabs than the rest of the population. The National Academy of Sciences found that a candidate with a Muslim-sounding last name is 2.5 times less likely to be offered an interview than a candidate with a Christian-sounding family name. This discrimination prevents Muslims from earning an income equal to that of their native French counterparts, and forces Muslims to live in poorer neighborhoods where crime is more prevalent. There is solid evidence of the income disparity in France, with one study finding that a Christian household makes 400 euros more per month than a Muslim one. These socio-economic factors pave the way for a separation between the two groups. The French majority has far more access to jobs, education and safe neighborhoods.

The build up of injustice finally led to a series of riots in 2005. Two young Arab youths were on their way home from a soccer game when they spotted police patrolling the area for a routine inspection. In an attempt to flee the police and avoid the lengthy questioning and accusations common in the run down suburb of Clichy-Sous-Bois, the two boys jumped into a bush and died of accidental electrocution. The incident prompted an outburst of riots across France in more than 300 communities resulting in at least three deaths and dozens of injuries. In just the first three weeks the riots caused a quarter of a

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151 Adida, Claire L., David D. Laitin, and Marie-Anne Valfort.
billion dollars in damage as a result of torched cars, buildings and businesses, and costs of increased police patrols. By the end of those three weeks, over 2,900 arrests were made and the National Assembly voted to declare a three-month state of emergency. The riots had made it clear: the Muslims of France had reached their boiling point.

Islam already had a bad image within France, and these riots did nothing but inflame the stereotype that most Muslims rejected French values and had ties to fundamentalism. A poll conducted a year after the riots “found that two thirds of the French associate Islam with religious fanaticism.”\textsuperscript{153} Though it is a minority rather than a majority that ends up joining extremist movements, the Muslim youth are certainly not free from the influence of extremist militant groups. Since the 1980’s groups of Islamic hardliners such as the salafists, wahabis and the Muslim renewal association known as Tablighi have recruited new members in the banlieue of Paris, often at riots.\textsuperscript{154} One example is the man behind the June 2016 killing of two police officers during which he swore allegiance to ISIS. Laroussi Abballa, 25, had previously stated “I needed recognition,” and “a local group of jihadists offered a sense of purpose in an otherwise directionless life that included bouts of unemployment.”\textsuperscript{155} These recruiters use the unfortunate social conditions of the Muslim youth (their position as outsiders, the stigma by state institutions and the media) as leverage and persuade young Muslim men to join their radical movements, which can sometimes lead to involvement in terrorism. This is a growing problem. In 2014 there were four crimes of jihad terrorism. In 2015 this number jumped significantly to 17, indicating

Islam inspired terrorism is if anything on the rise.\textsuperscript{156} This cannot be blamed on lack of integration alone but treating Muslims as a security threat does send the message that Muslims will never be truly French, inciting in them feelings of animosity that can lead to higher rates of homegrown terrorism.

The barriers to integration persistent in the banlieue have remained largely unsolved. Hugues Lagrange, a French sociologist and director of research at the Centre National de la Recherche Scientifique (CNRS), blames the both the left and the right for ignoring the key cultural factors. The right, rather than recognize the cultural differences in family structure, blames the families of young Muslim delinquents for their actions and there unchanging status. The left, he says, makes the mistake of focusing only on unemployment and ignoring family conflict and structure.\textsuperscript{157} Lagrange believes that France must undertake an ideological change. They must stop trying to balance the xenophobic security discourse and the mistaken analysis by the politically correct and instead put an end to formal egalitarianism and stop treating everyone equally. The French must recognize that there exist irreconcilable cultural differences that can only be alleviated by embracing multiculturalism and accommodation.

Several theorists have contended that the rigid French identity shaped by republicanism and laïcité is to blame for France’s cultural clash. Robert Brubacker, an American sociologist who writes about nationalism, observed, “The French understanding


of nationhood has been state-centered and assimilationist."\textsuperscript{158} The result is an attack on those who do not fit the mold, who today are Muslims.

The French should soon realize that this approach might hurt the country more than help create a mutual respect and unity. The connection between the burkini and threats to national security is lacking in proof. But it has been proven that a lack of integration, high rates of discrimination and a rise in anti-French sentiments among the Muslim population, can lead to homegrown terrorism. For this reason the French need to embrace multiculturalism and compromise. This could mean keeping the 2004 law banning veils in schools but repealing the 2011 law that bans veils in public places. Though French politicians insist those laws have been created in the name of respect for laïcité, their comments suggests otherwise. Those laws have had negative consequences.

The National Observatory Against Islamophobia found that from 2013 to 2015, 80 percent of violent anti-Muslim acts were directed at women, most of them veiled.\textsuperscript{159} When the U.S. Judges ruled on President Trump’s Muslims ban they stated that they took his anti-Muslim rhetoric into consideration when determining the true intent behind the ban. If the courts in France had done this in 2004 and 2011 the outcome might have been different.

France needs to loosen its definition of what it means to be French and invite diversity. The U.S. on the other hand already embraces diversity and has strong anti-discrimination laws but must protect it in the face of a new president who does not see these values as strengths of the country. The last chapter will critique Donald Trump’s policies, evaluate the true threat of the Muslim population of the U.S., and make predictions for the future.

\textsuperscript{158} Schain, Martin, 60.
CHAPTER 6: OUR FUTURE: RELIGIOUS FREEDOM UNDER THE TRUMP ADMINISTRATION

The election of Donald Trump appears to have ushered in a new era of nativism. This new era during which immigration and national security policy are a focal point, has demonstrated the tension between the need to combat foreign threats and safeguard the rights of American citizens. President Trump thinks that the biggest threat to national security is “radical Islam”. Due to the government’s inability to adequately distinguish the “bad guys” from ordinary Muslim refugees and immigrants, Trump has launched a campaign against radical Islam, advocating for a policy that discriminates on the basis of religion and threatens to restrict religious liberty. The policies Trump develops and implements in the next four years have the potential to change the course of American policy by redefining the appropriate balance between religious freedom, national identity and national security.

President Trump’s campaign and election have, in addition to awakening a latent nativism, augmented popular fears of Islam. Some prominent politicians, mostly on the far right of the Republican Party, and conservative talk show hosts and journalists have been railing against the threat of Islam for years, claiming without evidence that Muslims in the U.S want to impose Sharia law and Islam on America. In light of a recent surge of terrorism perpetrated by Muslims, these groups and Trump have been able to attract considerable support for policies that threaten the rights and liberties of Muslims by framing the policies as necessary to protecting Americans. Trump has dared to implement his policy of “a complete and total ban” of Muslim immigration and declare that the U.S. must combat radical Islam because millions of Americans, though perhaps not a majority, agreed.

Since then millions of Americans with no ties to Islam have sharply criticized his
rhetoric on Islam, including top Government Officials such as President Bush, and Senate Minority Leader Charles Schumer. Many Americans had hoped Trump would retreat from his promise of a “total and complete ban” of Muslims and maintain America’s reputation and tradition as a country that has always promoted freedom of religion and diversity. Unfortunately, this did not happen. Since the official start of the U.S. presidential campaign in June 2015 there has been a rise in both Islamophobia and legislation aimed to curb Islam in America, for instance the attempt by several states to ban sharia law.

The rise in terror attacks coincided with the beginning of the U.S. presidential campaign bringing anti-Muslim sentiments to the forefront once again. In December 2015 during the San Bernardino attack a radicalized Islamic couple killed 14 co-workers at a office holiday party. Then in June 2016 a Muslim man opened fire on a gay nightclub in Orlando, Florida that left 49 people dead. In July, just days after Trump gained his nomination at the Republican Convention, the world felt the pain of the Nice terror attack, in which a French Tunisian man plowed his truck through crowds of French and foreigners celebrating Bastille Day in the Mediterranean resort city. Just weeks later, millions of American watched with wide eyes the news of the slaying of a French priest by a man claiming allegiance to ISIS.160 These attacks, local and foreign, left an imprint on the nation, reinforcing fear and distrust of Muslims that was reflected in attitudes and more importantly in policy.

The 2015 attack in San Bernardino was the most decisive event of Trump’s campaign; it was in the days after that Trump cemented his policy of exclusion and hostility towards Muslims. Five days after the terror attack on December 7, 2015, Trump announced

his plan for a “total and complete” Muslim ban. He has since stated numerous times that Islam must not be “allowed to reside or spread within our own communities.” At a rally in Raleigh, North Carolina, Trump was asked how he would handle terror attacks. He responded, “I would get myself in so much trouble with them, we are going to handle it so tough.” Trump then followed up with a statement critical of political correctness, he said, “How about the person who knew what was going on said they didn’t want to report them because they think it might be racial profiling, did you see that? We have become so politically correct that we don’t know what the hell we’re doing.” Trump picked up on the frustration of many Americans who felt that his predecessor ignored these issues. Consequently, several million Americans applauded him for taking a strong approach to fighting terrorism.

Meanwhile another group of Americans was disappointed by what they called Trump’s bigoted response. President Obama and advocates of civil liberties warned that creating discriminatory laws that blame all Muslims (worldwide) for the actions of a few (let’s not forget- U.S. Citizens) violates the First Amendment, and has the potential to alienate many Muslim Americans. Even some of the victims of the San Bernardino terror attacks disagreed with Trump’s approach. John Ramos, who was injured in the attack, was able to see the fault in Trump’s ban, he said, “The person who carried out [the Dec. 2] attack was born in the U.S. and only went overseas to get a wife, it’s ill-conceived.” A family

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163 Kopan, Tal. "Donald Trump on San Bernardino response..."
164 Kopan, Tal. "Donald Trump on San Bernardino response..."
friend of another victim voiced support for U.S. policies that will keep America and Americans safe but added, “We hope America and President Trump can do this without violating our core values.” For now, Trump has let these people down.

Several states and Vice President Mike Pence appear to have let fear and prejudice influence their policy-making. Their perception of a threat may be colored by their incorrect assumptions about Muslims. As of 2010, 55 percent know little or nothing about Islam according to Pew Research Center. Another 35 percent say they know something and only nine percent say they know a great deal. The lack of information and the wide circulation of misinformation have led millions of Americans to be misinformed about Islam. When policy makers are tasked with assessing risk, their limited knowledge and muddled view of Islam presents a significant problem.

Convinced that Islam is a hegemonic religion preaching violence, several states have attempted to shut their doors to Muslim refugees. In order to reach President Obama’s stated goal of welcoming 10,000 refugees into the country all states have had to share the burden. Indiana admitted 174 Syrian refugees during the fiscal year of 2016, though not with open arms. Governor Mike Pence, now Vice President of the U.S., declared the Syrian refugees a security threat and announced that the state would suspend the Syrian refugee program and would not reimburse the non-profit Exodus, which helps settle new refugees, for costs incurred on behalf of the refugees. Exodus sued and the case was heard before the Seventh Circuit U.S. Court of Appeals in September of 2016. The judges wondered whether barring refugees was an effective anti-terrorism strategy. Aware of the discriminatory

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166 Branson-Potts, Hayley, Sarah Parvini, and Paloma Esquivel. “For victims of San Bernardino...”
undertones and fear-based motivation, the court asked the state: “Are Syrians the only Muslims Indiana fears?” Several other Governors followed Pence’s lead and responded with policies that barred refugees from entering their states. The court established that states couldn’t discriminate against immigrants because only the Federal government has the right to decide who can and cannot come into the country. Assuming that the most powerful members of the government will execute the laws with great care and integrity, this should have been a victory, but such was not the case.

6.1 The “Muslim” Ban

Just weeks after his inauguration President Trump signed an Executive Order sticking to his promise of banning Muslims from the country. On January 27, 2017 he revealed his policy which declared a suspension of all immigration for 90 days and of new refugee entries for 120 days from seven Muslim-majority countries: Iraq, Syria, Iran, Somalia, Yemen, Sudan and Libya. Ironically, the couple behind the San Bernardino terror attack, the event that initially prompted Trump’s proposal for a Muslim ban (or gave him an excuse to execute it), had ties to two Muslim-majority countries, Saudi Arabia and Pakistan—yet those countries were left off the list. We can speculate as to why: perhaps it was due to U.S. oil interests, or the need to maintain some allies in the Middle East, or maybe it was because of Trump’s personal business interests. But regardless of the reason, Saudi Arabia, the largest breeder of radical extremist Islam in the world, was not on the list. The

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169 Sanneh, Kelefa. "Untangling the Immigration Debate."
170 The Governors of Michigan, Alabama, Texas, Arkansas, and Louisiana also issued executive orders barring the entry of Syrian refugees to their states.
methodology behind the selection of countries is not clear, leading much of the population to question the ability of the ban to aid in counter-terrorism. The Court found that, “the Government has not offered any evidence or even an explanation of how the national security concerns that justified those designations.” Politicians in Trump’s own party have expressed their shock and disappointment as well.

Reaction to the travel ban has highlighted a divide on both policy and principle. Senate Minority Leader Chuck Schumer eloquently articulated the sentiments of many Americans. He said, ”Tears are running down the cheeks of the Statue of Liberty tonight as a grand tradition of America, welcoming immigrants, that has existed since America was founded has been stomped upon.” President Bush went out of his way to urge tolerance after being asked about Trump’s Muslim ban. Bush emphasized America’s strength as a country in which people are free to worship as they please. The American public was split on the issue. A poll conducted for Reuters at the end of January found that 48 percent of Americans agreed with Trump’s executive order, while 41 percent disagreed. When asked if the Order set a good example of how to best confront terrorism the number declined to 38 percent. Of the Americans polled, 34 percent said they had heard of it but did not know any details or were unfamiliar, reducing the validity of the poll’s suggestion that a majority of Americans support the ban. Nonetheless a fairly significant percent of Americans were found to be in favor of the ban.


172 "The State of Washington V. Donald J. Trump." For Publication in United States Court of Appeals...


Several states felt differently and were propelled to action by the belief that the ban was morally and constitutionally wrong. A number of states filed suits challenging the constitutionality of President Trump’s travel ban. On February 3, U.S. Federal district Judge James Robart of the Ninth Circuit Court issued a restraining order to halt Trump's order nationwide. In the case, the State of Washington and Minnesota sued the President and The Department of Justice alleging that “the Executive Order was not truly meant to protect against terror attacks by foreign nationals but rather was intended to enact a “Muslim ban” as the President had stated during his presidential campaign...”176 The DOJ filed an appeal, but the court affirmed the earlier ruling and denied the request. The three Judge Court did not rule on the constitutionality of the ban deciding it was too early to make a decision on claims of religious discrimination, but found the government had not shown a likelihood of success or that failure to enter a stay would cause irreparable harm. Trump responded by revising the travel ban to six countries, and allowing those with permanent residence, such as students, engineers, tourists, and relatives to enter the country. Following the second revised order, a judge in Hawaii argued that because Trump had asserted that he wanted a “Muslim ban” and had said to former New York Mayor Rudy Giuliani “show me the right way to do it legally,” the order established religious preference violating the Establishment Clause.177 Federal judge Theodore D. Chuang of Maryland agreed in a narrower ruling and called for an indefinite injunction arguing that the ban continued to discriminate against Muslims even though the President had taken out stipulation on preference for “minority religions.” Judge Chuang was willing to establish the obvious. In the context of Trump’s

statement the Muslim ban was clearly a form of religious discrimination. He stated, “The history of public statements continues to provide a convincing case that the purpose of the Second Executive Order remains the realization of the long-envisioned Muslim ban.”

The director of the ACLU David Cole believed Chuang statements to be true and said the revised order is still “religious discrimination in the pre-textual guise of national security. And it’s still unconstitutional.” For now the courts have spoken and ruled Trump’s order is unconstitutional.

The Muslim ban or Executive Order case is also noteworthy for its future implications. In light of reasonable public support for the ban, the judges’ ruling was a reminder of the country’s commitment to uphold its constitutional values. It is also likely to end up in the Supreme Court and with a newly appointed conservative judge there is a possibility that the case may be decided in Trump’s favor. The ruling will be a landmark case establishing the limits of religious policy for the future. It will set precedent for future immigration bans and will define the scope of the Courts ability to limit the president’s power. Only time will tell who will prevail, Trump and those who feel there is cause for limiting religious freedom, or champions of U.S. multiculturalism who want to promote religious freedom.

6.2 Islam in U.S. politics: Is the U.S. Obsessed?

Many Americans, politicians and civilians alike, have been scratching their heads trying to figure out why since 2016 there is a newfound and prominent focus on Islam and Muslims in American mainstream politics. There are several sound explanations for this.

The first is that multiple sectors of government have become involved in maintaining national security. The U.S. has long considered radical extremist Islam to be a threat to U.S. national security, even prior to the presidential campaign and President Trump’s election. In the past, the need to create policy to combat the threat of “radical Islam” was left to national security experts, the department of homeland security, the military and so on. More recently security policy has permeated multiple policy areas. American immigration, religious and discrimination policy also seek to play a role in combatting the threat, bringing these issues to the mainstream and into the minds of millions of Americans.

The other explanations are conditional rather than institutional. The American public has once again grown concerned because of a combination of factors. The formation of a new Muslim terrorist group ISIS, which stands for the Islamic State of Iraq and Syria, as opposed to Al Qaeda. Al Qaeda, which is also a radical Islamic terrorist group does not have the key piercing word ‘Islamic’ in it, nor does it refer to a specific country. A second factor is the rise in Islamic inspired terrorism and a rise in the reporting of that terrorism. Next is the impact of the Syrian refugee crisis, which has caused major debate in Europe after it was discovered that one of the November 13 Paris attackers had entered the country as a Syrian refugee. American citizens are informed by the actions of our allies in Europe who are dealing with these issues. Trump's proposal to ban travel from six Muslim Majority countries resembles France’s reaction to close its doors to refugees after what they called an intelligence failure. Both actions stem from the same rationale; the difference is that France claimed responsibility for its intelligence failure, while Trump has put the onus on Muslims.

6.3 How Are Muslims Faring in the U.S.?

From a policy perspective it is interesting to recognize that Americans have different
attitudes towards “Islam” and “Muslims.” Americans have distinguished between their views on Islam (the religion in abstract form) and their views of Muslims (a people) leading them to accept a policy that targets Islam but less so policy that blocks Muslims. A Brookings poll found that in 2011, 39 percent of Americans had favorable views of Islam. When Americans were asked about their views on Muslims, a larger percentage (50 percent) expressed favorable views. The poll results show that Americans have more favorable views of Muslims than they do of Islam. The researcher suggested that Americans associate Muslim with the Muslim population in the country, and Islam with the foreign threat of the religion. The differing poll results are unsurprising because Americans have been primed to differentiate between Muslims and Islam. Strong anti-discrimination laws have made it harder for Americans to express prejudice towards a people. Islam however is more abstract making it more acceptable to reject. Furthermore, favorable views of Muslims have increased from 50 percent expressing favorable views in 2011 to 53 percent in 2015. Prejudice towards Muslims, or minorities of any kind had not been acceptable in the country’s political landscape for decades, until now, until Trump. Unfavorable views of Islam have increased significantly from 2001 (37 percent) to 2015 (61 percent). This means the country has a problem with Islam that stands to get worse under Trump’s administration.

It is interesting that Americans have a more negative view and a heightened concern about foreign threats of Islam, when the greatest recent threats to the U.S. have been homegrown terrorists. Based on risk assessment, the U.S. should be more concerned with potential attacks from domestic terrorists than foreign ones. Of the U.S. attacks by Muslims

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181 Telhami, Shibley. "What Americans really think about Muslims and Islam."
in the last 15 years, American residents or citizens have perpetrated the majority. That being said the percentage of American Muslims who participate in terror attacks is very small. Overall Muslims in America have proven themselves loyal to the U.S.

Dearborn, Michigan, home to three times the percent of Muslims as the national average, is one example of proof of loyalty and patriotism. Sometimes called the “Arab capital of North America” Dearborn is home to the largest mosque in the U.S., the Arab Museum, halal McDonald’s and numerous Middle Eastern cafes, and has never posed a threat to the country or community. Residents of the town interact with one another unafraid of their neighbors. This is because the Dearborn Police Department has implemented smart policies that build trust between the Muslim community and the officers. In the past several years fathers have turned in sons they suspected of succumbing to radical online propaganda, students have turned in peers and Muslims have reported FBI informants sent in to infiltrate communities for being suspicious.

The high levels of cooperation between police and American Muslims are not unique to Dearborn. A member of a mosque in Virginia turned in a fellow Pakistani American when he learned of his plans to blow up a Metrorail in 2010. Another informant alerted the FBI of the plans of three Muslim teens to move to Syria to join ISIS in 2014. Furthermore, Pew reports that 76 percent of Muslim Americans are very or somewhat concerned with the rise of Islamic extremism around the world, compared with a close 81 percent of the general U.S. population. Contrary to statements made by GOP leaders that the U.S. cannot trust and therefore must ban all Muslims, the Dearborn Muslim community has been highly

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cooperative and patriotic. Those statements are wrong, but worse they diminish trust, offset prior success of programs and promote exclusion. Ayman Taleb, a 31-year-old born and raised in Dallas, Texas, said, "In America, if you're anything other than a WASP, then you're defined as the 'other,' and whenever a few select individuals do something outside the law, the entire community is associated. No community should have to bear the responsibility, no community should have to apologize or be asked to apologize." Dearborn Chief of Police Ronald Haddad adds that, "statements that tend to ignite fear, adversity in our community, just diverts us from what we normally do to keep our community safe." America has not yet solved its problem, but Dearborn should serve as an example of sound procedure and policy-making, not just for the U.S. but for France as well.

This one-third Arab city has often been compared to many of the banlieue of Paris, but they are different in several very important ways. Unlike France, the Muslim Arab community of Dearborn is not isolated from the rest of the city. They are connected to the community, they participate in politics, and they make up a majority of the city council. The same is true of the American Muslim population as a whole. The majority form part of the middle-class and 71 percent believe in the American dream. Furthermore American Muslims share the same anxieties over terrorism. Pew found that 51 percent are very

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184 Hirsh, Michael, Malcolm Nance, Daniel Benjamin, Mike Ross, Andrés Miguel Rondón, Aron Lund, and Virginia Heffernan. "Inside the FBI’s Secret Muslim Network."
concerned about Islamic extremism, compared to just 35 percent of the Muslim population in France.\textsuperscript{188}

The French could learn a few lessons from U.S. policy and strategy regarding Islam and Muslims. For one, the Outreach-and-Informant Program works far better than the police patrolling in France. Additionally, U.S. Discrimination and freedom of religion laws protect Muslims by sending the message that they are just as much members of the country as anyone else. Proof of this is that American Muslims are far more assimilated and patriotic than the Muslims in the banlieue. The added aspect of what may be interpreted by many French Muslims as religious persecution leads the residents of the banlieue to feel a stronger sense of exclusion and non-acceptance. There are however some instances of attempts to enact exclusionary policy in the U.S., but there are far fewer examples of this than in France.

Unbeknownst to many Americans, several states have laws similar to the 2004 French Law that bars religious garb at schools. Pennsylvania, Oregon and Nebraska are three such states. In Pennsylvania and Oregon the courts have upheld challenges brought under the First Amendment and Title VII to the religious garb law that forbids teachers from wearing religious costume at school. The court ruled in the case in Pennsylvania, \textit{U.S. V. Board of Education (1990)} that the school had acted pursuant to its “Garb Statute” when it informed a female Muslim teacher she could not work if she wore a her veil. When reviewed after an appeal, the court upheld its initial ruling determining that “the

preservation of religious neutrality is a compelling state interest.” In the similar 1986 Oregon case the court ruled on parallel grounds in favor of the state.

More recently however the states have attempted to correct discriminatory legislation of its past and courts have ruled in favor of religious rights. This March, Nebraska lawmakers passed a bill to lift the state’s ban on public school teachers wearing religious garb such as hijabs, yarmulkes and habits. The new legislation sought to correct the discriminatory ban passed in 1919 under pressure from the Ku Klux Klan. Pennsylvania has also passed legislation repealing their similar ban. There has also been a rise in individual claims to religious freedom. Muslims, who make up a minority religious group in the U.S., have brought more suits as they try to gain acceptance for their religion. In 2015 a young Muslim woman sued Abercrombie and Fitch for discriminating against her and denying her a job for wearing a hijab. It was the second case that term that the Supreme Court ruled in favor of a Muslim and religious freedom. These cases are evidence of the fact that the United States and France grapple with the same issues, but solve them in different ways.

Each country’s sense of national identity and national values has led to a different outcome and policy response. The U.S. prioritizes the individual while France prioritizes the state. In addition, state-level religious motivated legislation and regulation in the U.S. has not created the same outcry that the national laws have generated in France. Repression of the religious liberties of the Muslims in France accounts for lower levels of integration. Contrarily, higher levels of assimilation and employment among the U.S.

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Muslim minority suggest they are better off than their French counterparts. Trump’s rhetoric has already threatened this, but his policies have the potential to create lasting and disastrous change.

6.4 The Media: The Culprit of Misplaced Fears

President Trump cannot be blamed alone. He may perpetuate the idea that Muslims are dangerous but the media has skewed American opinion for decades. Only a handful of Muslims have committed terrorist attacks, yet it seems as though it has become common practice, why? Because the media has disproportionately spent more time reporting on the attacks perpetrated by Muslims. Researchers at the Georgia State University did a study on terrorism and the effects of media skew from 2011 to 2015. They found that for those five years Muslims carried out 11 of the 89 attacks in the U.S., yet the attacks by Muslims received 44 percent of the media coverage. The exaggerated media focus on Islam inspired terrorism has skewed American’s and Trump’s perception of the true danger of foreign Muslim terrorists. The researchers found that the risk of being killed in a jihadist terror attack in the U.S. in the last 15 years amounted to roughly 1 in 2,640,000. An important step in mitigating the tension between America and Islam is eliminating this bias. The media should make a greater effort to expend the same amount of resources covering non-Muslim terror attacks as it does for the Islamic-motivated attacks. This will give Americans a clearer and more fact-based perspective.

The United States is far from solving its religious liberty issues and will likely never come up with a solution that leaves everyone completely content. With the creation of

RFRA and RLUIPA the U.S. added the necessary legislation needed to safeguard the rights of religious minorities. Today, the battle for Muslims in the U.S. is far more ideological than fact based. As a result upholding the laws and the values that inspired them is ever more important. Multiculturalism is common practice in the United States, the land of liberty, equality and justice, but the challenge will be continuing this tradition. The Muslim population is predicted to double by 2050 due in large part to immigration according to Pew. The clash between Muslims and Americans will not dissipate. Altogether, the new administration brings with it a vastly different set of values, far different from any previous Republican Administrations. The United States must continue to hold its values close and embrace diversity, especially religious diversity not only for the sake of religious freedom and civil rights but also for the sake of national security. Fighting Islam with bigotry will not reduce its threat. Fighting Islam instead with acceptance, trust-building programs and fair religious policy will.
CONCLUSION

America and France are two democratic nations founded in the same period with constitutions that guarantee its people very similar fundamental rights. Yet the American definition of religious freedom and understanding of religious tolerance differs immensely from France’s. For the most part, the American ethos of live and let live or accommodation has kept the peace by upholding religious freedom. To keep the peace in their nation, the French installed a policy of laïcité.

Today we see the results of these different policy approaches. The French have made it illegal for Muslim women to wear headscarves, and the Americans have made it illegal to discriminate against women wearing them. Even when data has proven that some Muslims do pose a threat to national security, the U.S. Courts have upheld American laws and values and agreed that the threat of a small percentage of Muslims is not enough to justify spying on Muslim communities, banning all Muslims from entering the country and passing legislation that limits religious expression in the guise of national security concerns. This has not always been the case, but the U.S. has tried to enforce its policy of tolerance, non-discrimination and inclusion towards Muslims, and has instead focused on combatting foreign threats of Islam. France on the other hand has imposed a regime of laïcité and called for a public space free from religion, leading to laws that the Muslim community often considers discriminatory.

In recent years there has been an increase in legislation and policy that discriminates, restricts and excludes religious groups, and those policies have predominantly and negatively affected Muslims in both countries. These policies have sent the message to Muslims that Islam is not consistent with American or French values, and
that Muslim populations pose a danger to national security. This policy also has the effect of creating barriers to integration and exacerbating relations between the Western and Muslim worlds. In spite of their differences, both countries share strengths and weaknesses in their approaches to public policy.

A principle strength of the American approach is the value it places on religious tolerance. This emphasis on religious tolerance and freedom has been effective. There have been fewer challenges by American Muslims over the right to religious freedom than the French, in large part because the U.S. government has not passed legislation limiting the religious freedom of Muslims the way France has. When there have been disputes of religious freedom in the U.S., many have occurred at the state level. Some states have passed or attempted to pass legislation regulating the construction of mosques, stemming from the fact that a few mosques have been found to preach radical Islam. Other proposed policies have attempted to ban Sharia law, religious wear, and Muslim immigration, all of which impose limits on religious freedom and discriminate on the basis of religion. Nonetheless the lack of national religious legislation of this nature has kept tensions between Muslims and America relatively low, compared to France.

This is one of the key differences between the two countries that indicates that the U.S. will likely continue to protect the religious liberties of its citizens in the next four years despite Trump’s presidency, while France, if Le Pen is elected in the second round of the presidential election, may not. American’s attitudes towards Muslim people have become increasingly more favorable from 53 percent in November 2015 to 70 percent in October
2016, despite the mounting anti-Muslim rhetoric. One explanation for this is, the more Trump emphasized the issue, the more the Democrats, who are largely responsible for the huge increase in favorability, adopted the opposite position; that Muslims are not in fact a threat to the country’s identity or security. This should provide the American people with hope and optimism for the future. The silver lining of a polarizing president, Trump may open the eyes of the American people to a previously unimagined future and mobilize his opposition. Hopefully the same is true of France, should Le Pen win.

Trump’s approach to Islam is not new, but it has been the most shocking of past presidents. The U.S. tends to react to national security threats with an outward approach. After 9/11 the U.S. responded with an offense and invaded two Muslim majority countries. A few years later the U.S. sought to reduce Al Qaeda’s influence by mobilizing groups in Afghanistan to aid the U.S. in its operation to neutralize Bin Laden. Furthermore, the U.S. has continued to defend moderate leaders and governments abroad against radical Islamic governments. Meanwhile France tends to look for potential dangers within the nation. Past legislation in France, such as the 2011 headscarf ban, has targeted the Muslim population within the country. More recently after a string of terror attacks from 2015 to 2017, the French government has imposed legislation that limits the religious expression of Muslims such as the burkini ban, and has implemented policies like the Declaration of State of Emergency policy following the November attacks, that has constrained the civil liberties of the population. Trump’s ban exemplifies the completely different American policy pattern. According to him, his Executive Order seeks to contain the foreign threats. It is difficult to determine if one policy response has worked better than another considering all of the

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geopolitical factors that influence each nation. However on a very basic level, it may be possible that the U.S. strategy of eliminating foreign threats has worked better than France’s strategy of policing its Muslim population.

By comparing the number of Islam inspired terror attacks and challenges to religious freedom in each country we can deduce the effectiveness of each strategy. The U.S. has suffered fewer terror attacks by Muslims or adherents of the Islamic State than France in the last few years. There have also been fewer challenges by Muslims over the right to religious freedom. A reasonable conclusion then may be that the United States’ strategy of focusing on external threats has worked. But, upon closer examination this theory seems incorrect. It is not that the focus on outside threats has thwarted terror attacks in the U.S., but rather the lack of stringent laws that target and treat all Muslims as a security threat has not created the sense of exclusion of Muslims that French policy has.

The French have a problem with homegrown terrorism that the U.S., at least until 2015, did not have. A resident of the French banlieue explained that he believed Larossi Abballa, the French jihadist terrorist who stabbed a French police officer in December of 2016, had committed an act of terror because of revenge. He said the French government keeps pressuring them to conform and put the state first, “but we will not give up our religion. And if it leads to a clash...” It therefore seems likely that the root of France’s Muslim dilemma stems from its response of restricting religion, which has disproportionately affected Muslims. This brings us to another point of comparison: integration of each country’s Muslim population.

193 There have been 17 Islam inspire terror attacks in France in the last year and 11 in the U.S. from 2011-2015.
Integration has failed in France for several reasons. Its rigid sense of what it means to be French and its one-way model of integration have created an environment where discrimination can flourish behind the veil of the French tradition of unity. The laws that attempt to make everyone the same by instilling a regime of secularism certainly have not helped the Muslim community integrate. One issue is that the rigid French identity does not support integration. For integration to be successful both the receiving country and the immigrant population must make cultural sacrifices and compromise. Instead France has a model of assimilation, which clearly has not been sufficient. The opposition to Islam in France has been manifested in legislation banning veils and burkinis. In doing so France has developed a reputation especially among its Muslim population of being as anti-Islam. France is unwilling to accept someone as French and Muslim. This has created an attitudinal and social problem causing Muslims in France to feel unwelcome, isolated and excluded, which in turn has led them to withdraw from society and has hurt their odds of socio-economic integration.

Still it is not just the restrictive laws affecting religion, but also the lack of economic progress among Muslim immigrants that has stifled integration. The two are very closely related. Religious discrimination has prevented immigrants from economic integration, just as economic integration and the settlement of Muslims in the banlieue has led the French to view them in a negative light, as “other.” Muslims have settled in the banlieue were they are separated from the French and lack access to good education and schools. The outcome is lower levels of income and education among Muslims in France. Muslims have less access to education, face social discrimination in hiring, live in de facto ghettos, and lack government programs to include Muslim immigrants into the workforce. The de-facto discrimination is
linked to France’s colonial hegemony prior to 1960. However, the recent tensions have exacerbated discrimination. Lack of integration and socio-economic inequality is far more of an issue in France, than it is in U.S. and it is likely because the French government has created legislation that disproportionally and obviously discriminates against Muslims.

The governments’ wariness towards Muslims and failure of integration has created a greater potential for domestic terrorism to thrive. The terrorist of the April 20, shooting in Paris on the Champs-Elysees, for which ISIS claimed responsibility, was a Muslim French national living in a banlieue East of Paris who had affirmed his hatred for police and French authority on multiple occasions. The ideology used to justify the terror attacks has nothing to do with protecting jobs or legislation on religion: it sees all of French society as the enemy. As a result, France’s anti-Muslim policies have not succeeded in integrating their Muslim communities, which has created a sharp divide in the nation that increasingly poses a national security threat.

The U.S. on the other hand has succeeding in balancing religious policy and national identity and security. One indication of this is the extent of integration among Muslim Americans. A policy of multiculturalism and religious tolerance has encouraged integration in the U.S.. This policy has led to consistent rates of education and socio-economic and cultural integration. A high percentage of Muslim Americans (30 percent), foreign and native born, are college graduates, compared to 18 percent of the general American population. In terms of income, Muslims seem to be on equal ground with Americans, at

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least for those who make over $100,000 a year. Among lower income brackets the gap widens. There has also been a slight decline in Muslims’ incomes recent years, which could be the result of higher rates of Islamophobia and the economic recession of 2007 to 2009. Furthermore, a majority of Muslim Americans (56 percent) have a desire to integrate and adopt American customs, a strong indicator that the country appears welcoming. Another marker of successful integration is the answer to the question of “how do you think of yourself first?” Of U.S. Muslims polled, 49 percent said Muslims first, compared to 46 percent of Christians who responded that they identify as Christian before American. These are all signs that American policy has succeeded in welcoming and integrating Muslims.

However, this could all change in the next four years under the Trump Administration. The brief periods in the U.S. during which anti-Catholics and anti-alien sentiment prevailed were limited, but Trump has awoken an American spirit that fears the foreign alien and could have a profound domestic impact. The leaders of any country, the president, his administration and any of his appointees, have the power to change laws, create new laws through executive orders, and interpret them in new ways. If they have different values than past administrations, they can influence a change in established precedent and attempt to redefine the meaning of the laws. Trump and his appointees have the potential to do this. Throughout his campaign and in the first few months of his presidency President Trump has shown that his values and policy suggestions are strikingly different than our last few presidents. His policies will affect the entire country, but will have the strongest impact on Muslims who he believes threaten to change the American fabric.

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In France the future too, is shaky. The ideological gap between the two presidential candidates, the centrist Macron, and the far right Le Pen, resembles the polarizing U.S. campaign between Clinton and Trump. Macron won the first round by a slim margin of three points. Whoever is elected will impose his or her views and policies on the country, as Trump had begun to do. The candidates stand miles apart in terms of ideology and policy agendas. The world is a waiting to see who will capture the votes of French citizens. If Marine Le Pen wins the election, France could shift in the same direction the U.S. has.

Presidential hopeful Marine Le Pen has similar politics to Trump. She has run on the same platform of clamping down on Islam and keeping Muslims out and often refers to radical Islam and globalism as two evil forces that have the potential to destroy France. As of now, no proposal for a Muslim immigration ban has reached the French senate. But according to National Front mayor Steeve Briois, a leading member of Le Pen’s campaign, there is the possibility of a Muslim ban if Le Pen wins. When asked whether his party would consider employing the same ban as Trump he replied, “Why not...sometimes we may take authoritarian measures, even if they shock.” This is a policy the National front has supported since the 1990’s, but only in the last few months has it seemed likely.

The current French government has however condemned the ban, which is surprising considering France does have several religious laws that would by American standards be considered discriminatory and unconstitutional.

The election of Le Pen could radically change the future of religious freedom and discrimination policy in France, just as Trump’s ban and future policies have the potential to dismantle the country’s identity as a nation that values freedom, rights and diversity. The

policy tension here is that America, for the moment, still upholds its identity as a country of immigrants, a “melting pot” where immigrants can become Americans and prosper, but Trump’s actions threaten to change this. In France the election of Macron could shift French policy to a more open model that embraces its diverse population, or the election of Le Pen could reinforce rigid French national identity. The future remains to be seen.

There is much at stake in both countries. However, there is also much that can be drawn from each country’s values and legal system that can be used to implement positive policy change. The French should take a page from the Americans and adopt a more inclusive spirit. In terms of policy France should move away from model of state first, by changing the standard for religious freedom disputes to the American model which judges claims through a “least restrictive means” test. In addition, cities in France should create trust building and informant programs among police and residents of the Muslim majority banlieue to reduce tension between marginalized Muslim citizens and the state. In the U.S., the government should continue to support religious freedom and furthermore distance itself from religion. It should get rid of the references to God in the pledge of the allegiance, on money, and in public schools especially as the percentage of Christian Americans declines.\textsuperscript{199} Balancing religious freedom and national identity has become increasingly difficult as the majority in each country has shrunk with the arrival of new immigrants from diverse religious and ethnic backgrounds. With new presidents in each country the future is unpredictable. But ultimately, finding a comfortable balance between religious

\textsuperscript{199} The percent of Christians in the U.S. has declined from 74\% in 2007 to 63\% in 2014. In addition Protestantism is no longer the majority religion of the country. It is predicted by 2050 that the number of Muslims will be nearly equal to the number of Christians.

freedom and national identity will increase each nation’s security make the odds of harmony and unity far more likely.
APPENDIX: The Muslim Population of the U.S.

3.3 Million Muslims in the U.S.

1% of the U.S. population

% of Muslim Americans who are ...

- 63% First Generation
- 22% Third Gen. +
- 15% Second Gen.
- 19% U.S. Born
- 81% Foreign Born

% U.S. citizens

- 47% Muslim immigrants
- 70% All U.S. immigrants

56% of Muslim Americans say that most Muslims who come to the U.S. today want to adopt American customs and ways of life. In contrast, only ...

33% of the general public believes that Muslims who come to the United States want to adopt American customs.

% who attend worship services at least weekly

- 47% U.S. Muslims
- 45% U.S. Christians

69% U.S. Muslims say religion is very important to them

70% U.S. Christians say religion is very important to them

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APPENDIX: The Muslim Population of France

7.5% of the population is Muslim

15% of Paris is Muslim

Only 2,000 Women wear veils

46% of Muslims French accept laïcité and French values of secularism

Attend religious services...

5.1% FRENCH MUSLIMS Everyday

16.6% FRENCH MUSLIMS Once a week

31.3% FRENCH MUSLIMS Never

Veils....

57% of French Muslim women do not wear a veil

23% always wear a veil

7% wear a veil except at their place of work or school

Percent Foreign born...

50% of French Muslims were born French

24% of French Muslims acquired French citizenship

26% remain foreigners

(Source: “Un Islam Francais Est Possible.” Institute Montaigne, Sept 2016.)


