

# ARE HUMAN RIGHTS OF RELIGIOUS ORIGIN?<sup>1</sup>

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## ABSTRACT

*Are human rights codified in the late eighteenth century by natural rights of divine or philosophical origin? This question haunted Western political thought throughout the nineteenth and twentieth centuries. At the same time, the various Christian denominations have positioned themselves differently in the face of this political invention of modernity, between distrust and reappropriation. The international legal system of human rights resulting from World War II opted for a resolutely secular legal approach. According to its designers, the latter would be the guarantee of its real efficiency and universality. However, the universality of human rights is currently seriously challenged by new criticisms – both cultural and religious – emanating from certain countries – generally non-Western. But don't they denounce the Christian and Western origin of human rights in order to be better able to refrain from actually implementing them in their own societies?*

## KEYWORDS

Human rights | Religious freedom | Protestantism | Catholicism | Orthodoxy | Blasphemy | Universality | Natural rights

## 1 • Natural rights – divine or philosophical origin?

Shortly after the Declaration of the Rights of Man<sup>2</sup> and of the Citizen (DRMC) was proclaimed in 1789,<sup>3</sup> revolutionaries and the earliest commentators on the event immediately questioned the intellectual origin of the proclaimed rights. Natural rights, as they were promoted in the preamble of the DRMC – and in its revolutionary, but somewhat ambiguous article X on freedom of opinion, “including religious views”, in particular – evidently raised questions on the basis of the rights of man and the DRMC that they gave rise to.<sup>4</sup> Is this declaration simply an expression of the philosophical ideas (such as religious tolerance) popularized during the Age of Enlightenment or must we dig further – into religious doctrines – to find the original roots of its filiation and its liberalism?

The issue of natural rights is certainly the one that has been written about the most. The existence of “natural rights” has been the object of numerous debates – ones that have sparked some of the liveliest judicial-philosophical sparring matches up until today.<sup>5</sup> As Claude Nicolet recalls, Republican thought, the claimed heir of the revolution, is essentially a natural rights doctrine. It has always been affirmed that its original foundations are the declarations from the revolutionary period. In the eyes of their authors, all these historical declarations reflect the principles of natural rights in which they strongly believed.<sup>6</sup>

American jurist Harold Berman highlights that philosophers of law have continued to pursue the long-standing debate that opposes the so-called theory of positivism to the so-called theory of natural law for years. For the defenders of positivism, the law is primarily the expression of the will of actors who produce the law. For the latter, the law is the expression of moral principles that are specific to human nature, which are intelligible thanks to reason and conscience, and to which the historically established rules of substantive law must conform.<sup>7</sup>

For Christian churches, there is no doubt about the existence of immanent natural rights. Theological thought incorporated the idea that natural rights are of religious and divine origin and Christianity has assumed that this is true for centuries. Since the existence of natural rights has never truly been debated by the authors we are referring to, it is not our intention to get into this discussion here. Though clearly essential to jurists and historians and philosophers of law, this debate would distract us from our specifically historical purpose. We have therefore chosen to focus on the history of the religious interpretation of the DRMC in France from the time of the Revolution until the present day.

## 2 • The historical role of religious actors in the invention of human rights

To do so, we must first revisit the specific actions taken by religious actors during the first months of the French Revolution, namely the numerous representatives of the Catholic clergy (from the Order of the Clergy), but also the few Protestant ministers (from the order

of the Third Estate) who were involved. Lower clergy members and ministers did, in fact, play a decisive role in the debates on the place that religion should have in the new society in the making. In addition to the two well-known figures of Abbé Gregoire and minister Rabaut Saint-Etienne, the entire clergy (patriotic priests and pastors all mixed together) mobilised to passionately defend their concept of religious freedom.

Our aim was to re-examine the eminently religious roles that the first commentators attributed to the political fight for individual rights waged during the Revolution. We have thus identified the truly religious concepts of human rights that emerged among the commentators who were most active from a confessional point of view after the revolutionary events. We were able to retrace the emergence and development of a Protestant philosophy of history, which we feel is too often ignored by contemporary French political thinkers.<sup>8</sup> This philosophy, which highly valued America's earlier experience, naturally made the Reformation the first of a series of European political revolutions.

This notion of the religious origin of politics was developed by contemporary thinkers of the revolutionary phenomenon, from Thomas Paine to Germaine de Staël, and taken up again by the more liberal Romantic School in the 19<sup>th</sup> century. We also revised the concepts of several political thinkers who exerted strong intellectual influence in the 19<sup>th</sup> century, such as Edgar Quinet, Jules Michelet and Alexis de Tocqueville. Profoundly marked by the political-religious history of Europe from previous centuries, these authors were unable to disassociate revolutionary politics from its religious matrix and/or form. Several of their arguments have been clarified and refined by Republican historiographers, from Paul Janet to Alphonse Aulard, but not without controversy.

Debates arose between advocates of a religious origin of the rights of man, on one side, and defenders of a purely philosophical and French origin, on the other. It is important to note that this opposition between two antithetical interpretations of modern French political history became the most intense when the Republicans, who were finally firmly in power, adopted a policy that imposed secularism.

This controversy exploded for the last time when an academic quarrel erupted between French political scientist Émile Boutmy and Austrian jurist Georg Jellinek in the early 20<sup>th</sup> century. This dispute unfolded gradually throughout the year 1902 in a context marked by the tightening of the anti-religious policy by the Republicans in France. This debate, which offended advocates of a new line of French nationalism that appeared after the defeat of 1870 and continued to gain momentum until World War I, did not have any real intellectual offspring. The arguments used by the actors involved lost their relevance in French political thought developed since then. In our opinion, one of the reasons is the uncontested ideological and political victory of the secularist camp in France in the early 20<sup>th</sup> century. Another is the fact that political-religious issues were overtaken by the rise of social thought and socialist, then communist, activism. It was not until the ideology of continuous progress was brought into question, a "return of religion" was affirmed and

brandished like a scarecrow and, finally, the decline of Republican values was felt in the late 20<sup>th</sup> century that the debate was reassessed and the results of this assessment were discussed again. It resurfaced thanks to the contributions of a renewed historiography field.

The analyses produced by 19<sup>th</sup> century thinkers have undoubtedly contributed to the elaboration of contemporary political thought in various ways. And they are being studied once again by more contemporary thinkers who are debating their explanatory value in a world marked by the end of great ideologies. This is the case of historians and thinkers such as François Furet, Claude Lefort, Claude Nicolet and Marcel Gauchet, to mention only the most eminent ones among them. As a universalized political creed that is still celebrated today, the DRMC allows them to pose once again the question of the role that a theological-political philosophy could eventually play in a world marked by (unavoidable?) secularisation.

### 3 • Christian confessions on human rights: between distrust and reappropriation

Parallel to the development of all these political theories, religions also took a stance in the debate on human rights. Having made adherence to political ideas of progress the condition for their full integration into the national community after centuries of persecution, French Protestants massively and prematurely adopted the religious explanation of the advent of human rights. The DRMC became a modern political substitute for the teachings that they used to draw from their moral interpretation of the scriptures. After their civil and political reintegration into French citizenry in the first few months of the Revolution, they strongly contributed to the debate. Through their political actions or intellectual reflections, French Protestants helped establish a true myth – one on the eminently religious and Protestant origin of human rights and modern democracy.

It was only at the very end of the period of our study, after World War II, that certain Protestant thinkers voiced their theological reservations on this theory which had been, until then, unanimously accepted. Fighting to prevent the originality of their religious proposal from disappearing, as announced, because of what was deemed the excessive secularisation of its principles, they attempted to emphasise the need for a divine basis to guarantee a just enforcement of human rights by modern societies.

Catholicism, on the other hand, went in the exact opposite direction. Traumatized by the anticlerical and then anti-religious policy of the French Revolution, the magisterium in Rome immediately rejected the political and moral consequences of the ideology of human rights as it had been historically incorporated in France. It repeated its unwavering condemnation of this ideology regularly throughout the 19<sup>th</sup> and 20<sup>th</sup> centuries. The pope's admonitions and the Republicans' replies took on the tried and tested format of the traditional religious debate under the old regime. Yet, that did not prevent Catholics from elaborating original Christian thought on human rights outside the magisterium from the

19th century on. The intensification of the “War of Two Frances” prompted Catholics to attempt conciliation at the national level. These attempts were generally led by clerics or laypersons who had gradually adopted a more liberal vision and who, wanting to be more in touch with the society of their time, sought to reconcile the Catholic majority with the Republican’s policy. These attempts at an ecumenical sort of reconciliation were not understood by the magisterium, which maintained an uncompromising position for a long time, while it promoted intolerance of an exclusively theological nature. In a political space undergoing an accelerated modernisation process, it eventually became incomprehensible why the magisterium maintained this rigid stance.

While the same causes did not have exactly the same effects on Protestants, it was only during World War II that an intellectual movement seeking to alter the Church’s traditional position gradually asserted itself within the Catholic world. Appearing to no longer fear heinous condemnations, partisans of the movement strived to reconcile the modern ideology of human rights with the traditional teachings of the Church. The reflections of a Catholic layman and activist, Jacques Maritain, were, in our view, particularly decisive. He illustrated that the Catholic Church could come out from its besieged fortress – a position that was politically fatal at the time, as world politics were becoming increasingly global and secular – without having to renounce anything. Having made its mark by adopting a modern and Catholic concept of human rights during Vatican II, a turning point for the Church, the Church made its participation in contemporary political debates appear indispensable once again. Without renouncing all the reservations on an excessively individualist concept of human rights that it could have made until then, the Catholic Church proposed what it claimed was a personal and universalizable concept of human rights. Like the Protestants, the Church has never ceased to defend the directly divine foundation of human rights. Its position also included effective limitations on certain individual rights which it believed to fall within an exclusively religious and moral domain.

As for Eastern Orthodoxy, it has shown interest in the theology of human rights only very recently. This interest appeared as a result of the Orthodox churches’ ecumenical engagements at the end of World War II. Like Catholicism and Protestantism before them, the Orthodox churches affirm that an ideology of human rights originating in personalist theology existed well before it was written into international law. The Russian Orthodox Church proposed its own understanding of human rights in a document in 2008. This document links respect for human dignity to the moral duties and responsibilities of all humans. These responsibilities are summarised as a set of ethical norms that are consistent with the exercise of this original freedom. The document lists the five fundamental rights of man, which are the right to life, freedom of belief, freedom of speech, freedom of creation and the right to education.

Other Orthodox churches expressed their views on human rights, particularly during the Pan-Orthodox Council in 2016. There, the freedom of religion and belief, especially of people of faith, and also the collective rights of religious communities were prioritised at the

expense of other individual rights. In the Encyclical elaborated by the Council, the criticisms of the potential excesses that an overly individualist application of rights could lead to in society are even more precise: individual rights must be protected from attacks on freedom by the state (due to their Communist past, memories of totalitarianism play an important role in this approach). But they must not lead individuals to put their own rights before their human duties and their responsibilities to society. The orthodox doctrine on human rights is based on a particular and confessional understanding, which is different from universal human rights. It adheres to some principles, but does not recognise all of them.

It is the reinterpretation of the human rights adventure, from the time of their religious “prehistory” to their adoption by two Christian denominations of Western origin, that is important to us here. Following our more strictly judicial-political analysis,<sup>9</sup> we seek to unearth and restore the part played by religious actors in the reflection on human rights, from their origin until now. The success, or perhaps even the moral sacralisation of human rights tainted with political impotence that we are witnessing today, is the result of philosophical and theological-political debates that have fascinated French political and religious thinkers – and pitted them against one another – for over two centuries.

And it is thanks to the recent reconciliation of the doctrine on the moral and political universality of these rights among advocates of a strictly secular vision and defenders of a more theological-religious vision of history that the ideology of human rights is as consensual as it is today. Nevertheless, divergences among the two main schools of interpretation still lie behind this apparent political unanimity or this apparent unity among churches on human rights. No agreement has been reached on the exact nature of the foundations of human rights, nor on how far they should be allowed to extend into the human and social domain. The apparent global unity on the ideology of human rights thus still conceals many ambiguities, in at least so far as the definition of their exact content is concerned. Yet, this is also what still makes the search for the origin of human rights beyond their legal codification such a fruitful goal on the horizon, project or even utopia.

#### 4 • From religious or private human rights to secular and universal human rights

The issue of the philosophical or religious origins of human rights and the role of religions (as the engine or the breaks) in their slow development has been the subject of much debate in the 19<sup>th</sup> and 20<sup>th</sup> centuries, as we said earlier. We are particularly interested in recalling the outcomes of these debates through the analysis of texts published by different thinkers in a historical context marked by a constant political desire for emancipation from a dominant culture that was almost exclusively Christian at origin. Now, in the 21<sup>st</sup> century, the political world has become irreversibly laicised and societies, deeply secular, both in France and Europe. The risk posed by the manipulation of politics by religions, which fuelled the War of Two Frances for more than two centuries, appears to have been definitively dismissed.

Relegated to the management of the private sphere in relation to the personal and voluntary mode of adhesion, the main Christian religions resigned themselves to being but one of several sources of proposals in Western society. They have learned to play the democratic game – some with enthusiasm, while others with certain reservations – that history finally imposed upon them. A revisited and certainly more just version of Western history has emerged – one that naturally leaves room for religions to influence the elaboration of modern political thought, including its most liberal tendencies. What is there to say, then, of the little resonance that supporters of this version are currently having in France?

It should be noted that part of the intellection production of the most influential French thinkers of political philosophy today merely repeats a secular, Republican ideology, which is both overcautious and outdated in relation to the new issues raised by the growing diversity of religions and beliefs in society. Under the guise of a vision supposedly guided by a philosophical analysis that has been emancipated from theological thought, archaic forms of anti-religious anticlericalism inherited directly from French Enlightenment thinkers are resurfacing on a regular basis... This anticlericalism has diverted nearly all its attention away from its former enemies to attack another adversary: Islam, brought by the last peoples to set foot on French soil and who have, since then, established solid roots there.

Practicing Muslims became the new scapegoats, once the “clerics” had been defeated and Protestant or liberal Spiritualists had finally been hushed by secular Republic thought which had become mainstream and forgetful of its foundations. However, the current Republican and philosophical tradition – which too often excludes all religious explanations for social phenomena, as it deems them to be hopelessly outdated – becomes terrified when it sees a renewed religious conscience thriving among a part of those people who have decidedly become our fellow citizens. It judges them severely and does not allow itself to try to understand them, while mechanically taking refuge in the same old criteria from the past that are potentially harmful to individual rights. This explains the endless and dead-end controversies that have been convulsively stirring up the debate in France for over thirty years now – on both the left and the right – on the place and extent of secularism.<sup>10</sup> While these analyses do not necessarily assume, as clearly as they used to, the unthinkable nationalist and chauvinist ideas underlying them, they do not always avoid making racist assumptions. Furthermore, at a time when jihadist attacks are occurring in the region, the concern with security that is currently dominating politics contributes nothing to a calm assessment of the role that religious or spiritual proposals could have in our societies, which are sick from too much materialism and individualism.

This proves that the heart of our study – that is, the Jellinek-Boutmy debate in 1902 on the religious or philosophical origin of human rights – is still, in our opinion, quite relevant. Mentioned regularly in human rights literature since then, this debate, which has always been undervalued and thus avoided by the French, has never given rise to a substantial theoretical discussion. It would be interesting to understand the underlying reasons for this. However, our study pushes us now to validate our original hypothesis: Republican philosophy has never

really been unanimous and there has always been a tendency toward liberal political ideas and sometimes even Spiritualism, which are particularly influential in France. This line of thought deserves to be unearthed and some researchers are working to do just that.<sup>11</sup>

Even though its supporters have always been the minority, political liberalism has profoundly marked our legislation and how it has been used since. The philosophy behind the 1905 law separating the Church from the state is a clear example. The liberal jurisprudence of the Council of State in relation to the application of the principle of secularism shows that this liberalism is pragmatically integrated in practice. Universalised, secularised and made sacred all at the same time, the DRMC generally opposes actions that could potentially violate freedoms taken by a state that is sometimes more concerned with public order than with guaranteeing freedoms.<sup>12</sup> Thus, in the framework of the rule of law, French policy is more liberal than what people in France or abroad (especially Anglo-Saxon countries) tend to believe. Proof of this is the recent (one could even say overdue), still incomplete, but irreversible transformation of the Constitutional Council into a sort of supreme court “à la française” which is in charge of guaranteeing the constitutionality of laws, often in the light of the constitutionalised DRMC. It is not absurd to note that currently, civil liberties are most fiercely defended in France when religious issues are raised. And it is often first European, then French jurists acting as guardians of human rights, and thus of the principles of 1789, who manage to constrain the zealous calls for security by certain elected officials, regardless of the political side they are on.

Current French political thinkers cannot avoid the renewed questioning of the religious and political roots of the modern world without the risk of isolating themselves dangerously in the international arena.<sup>13</sup> Outside of our borders, this debate is far from over. It has been renewed and intensified since the major changes to the world order began in the 1980s. Since the end of a bi-polar world, consecrated by the collapse of the Berlin Wall and the failure of major secular political ideologies, we have witnessed the massive reaffirmation of the role of the theological-political in international affairs with the Iranian Islamic revolution and the rise of political Islamism that followed.

The trauma experienced in the West due to the September 11, 2001 events and the contradictions of the Anglo-American war “for democracy” against Iraq in 2003 gave rise to heated developments, especially on the other side of the Atlantic. The debates launched in 1989 on the “End of History” (Francis Fukuyama) and the “Clash of Civilisations” (Samuel P. Huntington) seem to definitely confirm the failure of it. Because even for Fukuyama, the end of history did not mean an immediate end to all conflict. It did announce, however, the absolute and definitive supremacy of the ideal of liberal democracy, which not only is the ultimate unsurpassable limit of our times, but that could also be effectively universalised and adopted here and now all over the world.<sup>14</sup> However, the current unrest in the Middle East, marked by troubling phenomena for democracies such as globalised violent jihadism and the bloody return of religious politics in Muslim countries (with the polarisation between Shiite and Sunni communities) pokes holes in

the hypothesis of a gradual, democratic and secular pacification of the modern world. Huntington could easily reply that the return of a non-liberal ideology or authoritarian restrictions on democracy are always a possibility and that this kind of development can be easily manipulated for political or social domination purposes. The current resurgence of identity politics led by former adversaries of the West (Russia, China and countries of Eastern Europe) and the destabilising international impacts of political Islamism are clear signs of the strong comeback of ideology in international relations.<sup>15</sup>

One could add that since the 2000s, the repeated violations of human rights principles resulting from the foreign policies openly implemented by Western countries that are supposed to uphold these rights weakens this liberal doctrine further. They gave rise to heated debates in North America between those who support the use of force to impose democracy in the Middle-East and others who argue that as commendable as the pursued goal may be, there is no justification for the use of these means at the risk of destroying the legitimacy of the entire edifice of human rights based on the absolute superiority of the values of individual and collective freedom.<sup>16</sup> The abuses committed by the West in Iraq and elsewhere, under the pretext of defending human rights, unleashed dissonant voices and transgressive policies coming from certain non-European states. These states saw the abuses as a convenient excuse to exempt themselves from fully respecting these rights, while the international community watched helplessly.

## 5 • The universality of human rights contested

All of this reopened the debate that had been temporarily closed in 1948 on the issue of the universalisation and the contemporary sacralisation of the ideology of modern human rights.<sup>17</sup> Political questioning of this self-proclaimed universalism began in the 1980s and found allies among certain Asian countries, like China and other Southeast Asian states, that defend the need to respect rights originating in their ancient traditions (vaguely referred to as “Asian values”) and relativize the ones established by international legal documents and declarations of principles on individual and political rights. Yet, it is the multiplication of human rights declarations in Islam that appears to pose the biggest danger to the foundations of the global legal system.<sup>18</sup> The tactical use of international human rights vocabulary to legitimise the primacy of Islamic law over secularised international law is a sign of this. In our view, it reminds us of the divergences that we described above between the Catholic Church and secular political authorities on the interpretation of the foundations and the limits of human rights. However, it is the fact that this new relativization of rights originated from political groups, and not from only one specific religious organisation, which makes it even more dangerous to the world order. Applied in a very specific way to Islamic countries, all these different texts were issued by political groups set up by Muslim states that are not necessarily all Arab. And it is in relation to the right to religious (and thus political) freedom that these declarations prove to threaten the universality of civil and political rights at the global level the most.

Narrow interpretations of the issue of the individual right to freedom of religion and belief can be effectively found in the majority of Islamic texts on human rights. The interpretation of freedom of religion differs little from one text to next, but in all of them, the enjoyment of this freedom is conditional upon respect for Islamic law and the absolute superiority of the rights of God. Articles 26 and 27 of the Arab Charter of Human Rights (ACHR) of 1994,<sup>19</sup> revised by article 30 of the 2004 version, appear to be quite liberal as they guarantee the freedom of religion, thought and belief of people of all faiths. They do not, though, guarantee the right to exercise this freedom “both in public and in private” as required by international standards. The same applies to articles 12 and 13 of the Universal Islamic Declaration of Human Rights of 1981 proposed by the Islamic Council of Europe. However, these articles completely disappeared in the two Declarations of Human Rights in Islam (DHRI) proclaimed by the Organisation of the Islamic Conference (OIC) first in Dacca in 1983 and then in Cairo in 1990. The first text is a mere declaration of intent, whereas the latter does not contain any articles specifically dedicated to the right to freedom of belief or religion. On the contrary, article 10 absolutely forbids Muslim men from renouncing their religion and/or embracing atheism.<sup>20</sup>

## 6 • The return of the blasphemy offense, a challenge to the integrity of human rights

As the crisis surrounding the international recognition of the crime of blasphemy shows, the application of the theory of the primacy of divine law over civil law to practical cases illustrates the size of the challenges that these declarations of human rights in Islam can raise for the international human rights system.

The renewed success at the international level of the concept of blasphemy – often referred to as “defamation of religion”, a term with fewer Christian connotations – was, in fact, the result of a moment of vacillation by the international community. This case illustrates once again the complexity of the relation between religions and human rights.<sup>21</sup> A study by the Pew Research Center established that 94 out of 198 countries possess laws against blasphemy, apostasy or defamation of religion, which seem to run counter to international texts on freedom of religion and belief.<sup>22</sup> In certain countries, punishments for blasphemy go as far as the death penalty. In Europe alone, 23 of the 28 states of the European Union specifically mention blasphemy in their legislation. They are, though, rarely enforced and only address attacks on individuals and not on beliefs or dogmas. But incidents abroad are what have put the issue of blasphemy at the centre of debate. Events with major international repercussions such as the fatwa against the writer Salman Rushdie (1989), the responses to the “Muhammed cartoons” (2005-2015) or the provocative images of American Protestant fundamentalists burning sacred texts such as the Koran distributed around the world on the internet caused events and mobilized entire crowds thousands of kilometres away.

Furthermore, the problem of the defamation of religions became one of the main topics of discussion at the UN Human Rights Council between 1999 and 2010. Generally

led by Muslim countries (and the political-religious voice of the OIC in particular) and sometimes supported *mezzo voce* by the Vatican and more loudly by Protestant fundamentalists, this debate is a global issue that involves much more than religious problems. By turning the conflict of values into a confrontation of norms and by seeking to impose a special and exceptional status on religious beliefs, the debate also brings into question the foundations and balance of the entire edifice of human rights built on secularised and universalist natural law. One of the initial consequences of this was the scuttling of the UN Commission on Human Rights, which had acceded to the complaints by proposing a resolution adopted at the UN General Assembly in late 2005, which was not binding. In 2006, the UN was forced to reorganise its human rights body in the framework of a new structure and according to new mechanisms (the Human Rights Council).<sup>23</sup> Western, European and French diplomats,<sup>24</sup> in particular, worked hard and succeeded in disarming these attacks on the freedom of expression.<sup>25</sup> At the end of this diplomatic wrestling match, the OIC renounced (temporarily?) its attempt to get an international law on the defamation of religions adopted. To the ambivalence of these texts and the demands from Islamic countries, we must add the continued legal existence in numerous Arab countries of the personal statutes inherited from the ancient law of minorities of the Ottoman Empire, which confines non-Muslim believers to their own communities instead of granting them true citizenship. When examined in the light of all this, certain Muslim countries' respect for the principle of freedom of religion and belief appears highly questionable. As of now, the UN obviously still has reservations about all these texts and denies that they are in conformity with international human rights standards as it has previously defined them. Thus, the international system continues to resist, but how long?

## 7 • Conclusion: human rights, secular legal principles of universal morality

Now, as we conclude this study, the question that has been posed regularly since the initial appearance of human rights declarations up until today remains: is the secular ideology of human rights, as it has been developed throughout contemporary history, the heir or the declared enemy of the anthropological proposals offered by various religions? We have attempted to show how, in the case of France, human rights thought lived historically through the process where the political was torn from the religious, the latter being represented by an overly compromised Catholicism of the ancient regime due to its opportunist alliance with the monarchy. The battle that ensued was between a deeply wounded Catholic party, which overbid on doctrinal intransigence, and a Republic model gradually imposed in the pain of unending political stability. This battle hardened these positions, which would continue to be irreconcilable for a very long time. Traces of this battle (or should we say scars that are still sensitive?) can be found even today. Some now endeavour to reopen the wounds, despite the triumphant Republic's attempt to appease everyone through the liberal and fair spirit it promoted in its version of

secularism.<sup>26</sup> The reluctance to recognising the spiritual side that the Christian model brings to the acclimatisation of freedom in France is obvious, especially now that other religious traditions want to benefit from it too. As for the American model, the War of Independence took another path – one that is more liberal and inclusive. By making the absolute right of all citizens to freedom of religion the guarantee for all their civil and political rights, it gave Christian and then non-Christian religions the opportunity to adapt gradually – including from a theological point of view – to the secularism of the state and to social pluralism, guaranteed by the figure of a transcendent god.

The international human rights system, for its part, followed another route. Established in the wake of the greatest tragedy in all history and constantly evolving ever since, it is intended to apply universally to all people in all societies, regardless of the political system chosen by their state. During the elaboration of the Universal Declaration of Human Rights (UDHR) by an international committee in which all continents, all opinions and all religious traditions were represented, the question of the foundation of human rights was inevitably raised. A broad consultation was carried out with the different countries involved. In view of the extreme diversity of the responses received, it was soon realized that finding a response that would please everyone was an impossible task. This is why it was deliberately decided that the Universal Declaration would not be placed under any supernatural authority in order to ensure that it would be popularized and adopted around the world as quickly as possible. Representing the peoples of the United Nations who reaffirmed their faith in fundamental human rights, the Assembly merely proclaimed an “ideal” common to all people and founded on the basic principle of equal human worth and dignity. As secular as the text is, it is broad enough to accommodate all proposals, provided that they respect its profoundly humanist terms. Its silence is where its greatness lies.

## NOTES

- 1 • Valentine Zuber, *L'Origine Religieuse des Droits de l'Homme. Le Christianisme Occidental Face aux Libertés Modernes (XVIIIe-XXIe Siècles)* (Genève: Labor et Fides, 2017).
- 2 • Editorial Note: In the text, the expression "droits de l'homme" was literally translated as "rights of man" only in cases of direct allusion to the French document of 1789 resulting from the French Revolution (Declaration of the Rights of Man and Citizen). Throughout the text, we chose to translate the same expression as "human rights", considering that in English the word "man" restricts the general meaning of "human beings", which are, in fact, the reference and basis of these rights recognized as universal.
- 3 • We will herein use "DRMC" to refer to the Declaration of the Rights of Man and of the Citizen of 1789-1791.
- 4 • Valentine Zuber, « Une Laïcité sous Contrôle ? Les Débats sur la Liberté Religieuse en France de la Révolution à Nos Jours, entre Libéralisme et Régalisme », in *Croire, s'Engager, Chercher. Autour de Jean Baubérot, du Protestantisme à la Laïcité*, dir. Valentine Zuber, Patrick Cabanel and Raphaël Liogier (Turnhout: Brepols, coll. BEHE, 2016): 165-195.
- 5 • See Joseph Charmont's book of summaries, *La Renaissance du Droit Naturel*, 2<sup>nd</sup> ed. (Paris: Librairie de jurisprudence ancienne et moderne, 1927), with a preface by M. Gaston Morin; *Annales de la Philosophie Politique* (Paris: Presses universitaires de France, 1959), and contributions from Hans Kelsen and Alessandro Passerin d'Entrèves; Michel Villey, *Leçons D'Histoire de la Philosophie du Droit* (Paris: Droz, 1961); « Le Droit Naturel et L'histoire », in *Seize Essais de Philosophie du Droit dont un sur la Crise Universitaire*, Michel Villey (Paris: Dalloz, 1969); and more recently: Franck Tinland, *Droit Naturel, Loi Civile et Souveraineté à L'Époque Classique* (Paris: Presses universitaires de France, 1988); Blandine Barret-Kriegel, *Les Droits de l'Homme et le Droit Naturel*, ed. Quadrige (Paris: Presses universitaires de France, 1989); Jacqueline Lagrée, *La Religion Naturelle*, coll. philosophie (Paris: Presses universitaires de France, 1991).
- 6 • Claude Nicolet, « Les Droits de l'Homme et du Citoyen; du Droit Naturel à la Loi Naturelle des Idéologues », in *L'Idée Républicaine en France. Essai d'Histoire Critique*, Claude Nicolet (Paris: Gallimard, 1982): 333-342.
- 7 • Harold J. Berman, *Droit et Révolution. L'Impact des Réformes Protestantes sur la Tradition Juridique Occidentale* (Paris: Fayard, 2011): 623-624.
- 8 • With a few exceptions... See Vincent Peillon, *La Révolution Française n'est pas Terminée* (Le Paris: Seuil, 2008).
- 9 • Valentine Zuber, *Le Culte des Droits de l'Homme* (Paris: Gallimard, 2014).
- 10 • In our opinion, the eruption of the « affaire du foulard » (the headscarf affair) in France for the first time was no accident: it happened in 1989.
- 11 • Jean-Paul Willaime, « La Fonction Infrapolitique du Religieux », *The Annual Review of the Social Sciences of Religion* 5 (1981): 167-186; Peillon, *La Révolution Française...*, 2008; Jean Baubérot, *Les 7 Laïcités Françaises*, coll. Interventions (Paris: Maison des Sciences de l'Homme, 2015), and Philippe Portier, *L'État et les Religions en France. Une Sociologie Historique de la Laïcité* (Rennes, Presses universitaires de Rennes, 2016), among others.
- 12 • Zuber, *Le Culte...*, 2014.
- 13 • Micheline Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (Berkeley: University of California Press, 2004). See recent analyses of the construction of "human rights" as an object of study in the 1970s and 1980s within the Anglo-Saxon sphere: Samuel Moyn, *The Last Utopia. Human Rights in History* (Cambridge: Belknap Press of Harvard University Press, 2010).
- 14 • Francis Fukuyama, *La Fin de l'Histoire et le Dernier Homme*, coll. Histoire (Paris: Flammarion, [1989] 1992).
- 15 • Samuel P. Huntington, *Le Choc des Civilisations* (Paris: Éditions Odile Jacob, [1996] 1997).

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16 • See the vigorous debate on the US crusade in 2003 in Iraq between Michael Ignatieff, "The Burden." *New York Times Magazine*, January 5, 2003, accessed June 25, 2019, <https://www.nytimes.com/2003/01/05/magazine/the-american-empire-the-burden.html>; and Wendy Brown, « Néolibéralisme et Fin de la Démocratie, » *Vacarme* 4, no. 29 (Autumn 2004): 86-93, <https://vacarme.org/article1375.html>.

17 • See, in particular, the analyses of Wolfgang Schmale, «Georg Jellinek et la Déclaration des Droits de l'homme de 1789», in *Mélanges Offerts à Claude Petitfrère: Regards sur les Sociétés Modernes (XVIe-XVIIe siècle)*, ed. Denise Turrel (ed.) (Tours: CEHVI, Publication de l'Université de Tours, 1997); Duncan Kelly, «Revisiting the Rights of Man: Georg Jellinek on Rights and the State,» *Law and History Review* 22, no. 3 (Fall 2004): 493-530, accessed June 25, 2019, <http://www.historycooperative.org/journals/lhr/22.3/kelly.html>; and Hans Joas, *The Sacredness of the Person. A New Genealogy of Human Rights* (Washington: Georgetown University Press, 2013).

18 • To see the translations of these human rights declarations into Islam, see Mohammed Amin Al-Midani, *Les Droits de l'Homme et l'Islam. Textes des Organisations Arabes et Islamiques* (Strasbourg: Association des Publications de la Faculté de Théologie Protestante, Université Marc Bloch, 2003), preface by Jean-François Collange.

19 • Amin Al-Midani, «La Charte Arabe des Droits de l'Homme de 2004.» ACIHL, July 30, 2004, accessed June 25, 2019, [https://www.acihl.org/texts.htm?article\\_id=16](https://www.acihl.org/texts.htm?article_id=16).

20 • «Déclarations sur les Droits de l'homme en Islam,» Organisation de la Coopération Islamique (OCI), August 5, 1990, accessed June 25, 2019, [https://www.oic-iphrc.org/fr/data/docs/legal\\_instruments/OIC\\_HRRIT/942045.pdf](https://www.oic-iphrc.org/fr/data/docs/legal_instruments/OIC_HRRIT/942045.pdf).

21 • Alain Dierkens and Jean-Philippe Schreiber, ed., *Le Blasphème: Du Pêché au Crime*, coll. «Problèmes d'histoire des religions», t. XXI (Bruxelles: Édition de l'Université de Bruxelles, 2012).

22 • «Laws Penalizing Blasphemy, Apostasy and Defamation of Religion are Widespread, » Pew

Research Center, November 21, 2012, accessed June 25, 2019, <http://www.pewforum.org/2012/11/21/laws-penalizing-blasphemy-apostasy-and-defamation-of-religion-are-widespread/>.

23 • This did not prevent the UN General Assembly from holding another vote on a new resolution (61/164) on the need to "respect religions", in which the "defamation of religions" had been included in the accepted reasons for limiting the freedom of expression. The following year, the Human Rights Council adopted a resolution (A/HRC/4/L.12) urging the "international community" to fight against the "defamation of religions". This resolution notably received the support of Russia and even countries that are officially "atheist", such as China and Cuba.

24 • Patriziana Sparacino, «La Politique Extérieure de la France et la Liberté Religieuse,» in *La liberté religieuse*, ed. Valentine Zuber (Paris: Vandieren éditions, 2017): 131-137.

25 • The debate also emerged in the international system's regional bodies such as the Council of Europe. Article 3 of resolution 1510 adopted by the Parliamentary Assembly of the Council of Europe in 2006 also states that "Attacks on individuals on grounds of their religion or race cannot be permitted but blasphemy laws should not be used to curtail freedom of expression and thought." "Freedom of expression and respect for religious beliefs", Parliamentary Assembly, June 28, 2006, accessed June 25, 2019, <https://rm.coe.int/16806461f9>.

26 • The liberal philosophy is summarized by the first two articles of the Law on the Separation of the Churches and the State of December 9, 1905: "Art. 1: The Republic shall ensure freedom of conscience. It shall guarantee freedom of worship, subject only to restrictions imposed hereinafter in the interests of public order. Art. 2: The Republic does not recognise, pay or subsidise any religion". «Loi du 9 Décembre 1905 Concernant la Séparation des Eglises et de l'Etat. - Article 1,» Legifrance, 1905, accessed June 25, 2019, <https://www.legifrance.gouv.fr/affichTexteArticle.do?idArticle=LEGIARTI000006340313&cidTexte=LEGI TEXT000006070169&dateTexte=19051211>.

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