

VOICES ON VALUES REPORT | February 2019

# LIBERTÉ, ÉGALITÉ, FRATERNITÉ – MAIS POUR QUI?

## ATTITUDES IN FRANCE TO AN OPEN SOCIETY

**OPEN SOCIETY**  
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# CONTENTS

2	<b>EXECUTIVE SUMMARY</b>
3	<b>INTRODUCTION</b>
5	<b>DEMOCRATIC BUT NOT SO OPEN?</b>
5	The ‘open society’ – an expression with little traction
7	The use of more effective legal and political categories
8	<b>SUPPORT FOR OPEN SOCIETY PRINCIPLES</b>
8	Democrats or open society supporters?
10	What price solidarity?
12	Democrats - but not necessarily open society supporters
14	<b>GRADATIONS OF SUPPORT</b>
14	<i>Cheerleaders</i> : no bulwark against open society enemies
15	<i>Stalwarts</i> : steady but poorly organised
16	The left-right divide still matters
17	<b>TWO AREAS WHERE PRINCIPLES OF OPENNESS ARE MOST CHALLENGED</b>
17	Insistence on security
19	The migration riddle
22	<b>CONCLUSION</b>
23	<b>RECOMMENDATIONS</b>
24	<b>BIBLIOGRAPHY</b>
25	<b>APPENDIX</b>
27	<b>APPENDIX II</b>

# EXECUTIVE SUMMARY

The democratic principles at the core of an open society are embodied by France's republican national motto of freedom, equality and fraternity (*Liberté, égalité, fraternité*). The data from our report shows that the French overwhelmingly support freedom of thought and expression, along with the rule of law. Principles specifically concerned with openness (how far do democratic rights extend?) are less well entrenched.

A few salient points:

The first is that the expression 'open society' does not have much currency in France. It is understood once broken down into its constituent elements. However, parts of the French public regularly pressure the government to adopt what we in this report call open society values.

Second, advocates of greater legal provisions in France have made spectacular gains. The recent enshrining into law of the 'fraternity' principle was hailed as a huge victory, because it makes it imperative to help refugees and migrants, regardless of their legal status.

Third, this legal route appears to be particularly effective when advocacy uses terms that are well established in the French political vocabulary.

Our respondents may at first sight appear erratic in their allegiances to an open society. We would suggest that this is in part because they feel a stronger allegiance to democratic norms than to principles of openness.

Two topics in particular prompted views that apparently diverge from the principles of an open society: law enforcement and migration. On the former, we noted a readiness to accept tougher security measures even if this meant a trade-off on some fundamental rights. This is perhaps unsurprising, given France's recent experience of terrorist attacks.

On migration, there is a strong demand for the government to do no more than at present to "welcome migrants".

Although we were not testing attitudes historically, it is inevitable that thirty years of anti-immigration discourse propagated by Jean-Marie Le Pen, and later by his daughter – and then relayed by the media – will have taken their toll. Equally, it is clear that the French want migration matters to be dealt with at the European level.

# INTRODUCTION

**“If we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them.”**

Karl Popper

The Open Society and its Enemies (Introduction)

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Freedom of thought and the rule of law are fundamental to an open society’s goals of fostering and protecting individual freedoms.<sup>1</sup> But the characteristics of an open society have also been outlined by Karl Popper when he described it as a society in which no one has a monopoly on truth.<sup>2</sup>

This can be taken to mean two things; it can mean that truths should always be tested – Popper’s falsification imperative – and perhaps more importantly for our purpose, it also means that no group in society should consider itself entitled to define the scope of that society’s principles.

This is important because it means that believing in a democratic society does not necessarily mean believing in an open society. Or – at least – that gradations of openness co-exist with democratic practices and beliefs. You can believe in the rule of law, in freedom of expression, and even in tolerance towards diversity. How these should be related to the architecture of political power and its institutions – and whom they should include or exclude – is the fundamental test of an open society, as opposed to a democratic society.

Even in today’s solidly democratic societies, there is an ongoing debate about who should decide on the rules and how far these should extend to new citizens or non-citizens. Do they apply to everyone who lives there? Or only citizens? Are there minimum requirements that establish who is able to shape the rules, and define truth?

In this report we will take “open society principles” to mean democratic principles, whilst also acknowledging Popper’s dimension of openness. Democratic principles are about freedom of thought and expression, the rule of law and the protection of minorities. The principles of openness are those that extend these democratic rights to people who have not been a traditional part of that nation, or who are recently-minted citizens and not yet perceived as culturally integrated.

In France’s case, our research suggests a deep allegiance to democratic institutions and principles, although openness in Popper’s sense may be more problematic – even if progress is being made. We suspect this to be the case in many Western

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1 Soros, 2009. See also G Soros, The capitalist threat, The Atlantic, February 1997, <https://www.theatlantic.com/magazine/archive/1997/02/the-capitalist-threat/376773/>

2 Karl Popper, The Open Society and its Enemies, Vol 1, Routledge, 1962, p. 279.

democracies where the boundaries of national society and identity are being redrawn.

Even the most progressive supporters of democracy may want to define its boundaries in ways that contradict open society principles. They can often seem to be saying: “These are our societies and only our truths should prevail.” This may even appear in the guise of a defence of democratic rights. This has been the case with religion in France, and is currently the case with transgender issues in many countries. It is not uncommon for committed democrats to reject claims for recognition or rights because these challenge hard-won democratic institutions. The argument among feminists about transgender rights is a case in point.

This report explores what support exists in France for openness over and above democratic rules, and how the French see their relationship to the boundaries of democracy. On a more basic level, we also examine whether the expression ‘open society’ has any currency in France, and what the most effective paths might be towards a democratic society that is more open.

This is an interesting yet particularly tricky time to explore these questions. As elsewhere, the past two years have tested the limits of France’s resilience.

Marine Le Pen and her Rassemblement National (RN) have deeply affected French political discourse and policy choices. And the election of Emmanuel Macron in 2017 has changed the long-standing landscape of partisan loyalties.

By annihilating the Socialist party and badly damaging the mainstream right, Macron may not have revolutionised the French political system. But he has certainly made it more difficult to correlate political and social attitudes with party loyalties. This is in part because Macron’s campaign and rhetoric separated politics from the identity debates that have long dominated French political conversation. His insistence on political and social openness – as well as his defeat of Marine Le Pen in the second round - created the brief impression that identity debates were no longer as urgent or dominant in France. But where are we now?

The first section of the report documents the strong support in France for the core principles of a democratic society, and how this relates to an open society. The second section identifies striking inconsistencies in the support for open society principles. The third section analyses developments in law enforcement and migration and contextualises them. The final section focuses on recommendations.

# DEMOCRATIC BUT NOT SO OPEN?

Some of the core principles that define an open society have strong support in France. But a) the expression is not widely used; and b) there is less allegiance to some of the characteristics associated with openness.

## THE ‘OPEN SOCIETY’ – AN EXPRESSION WITH LITTLE TRACTION

The concept ‘open society’ has little currency in France, even among politicians, journalists and most activists.

The people we interviewed asked us to clarify what they called a “fuzzy notion”; they were not familiar with the expression ‘open society’. For instance Guy Aurenche, former president of the Catholic Committee against Hunger and for Development, said:<sup>3</sup>

*“Once you’ve explained it I understand it, but I am not sure the expression has currency in France. French tradition basically focuses on humanism and humanity. One of our slogans at CCFD-Terre Solidaire was ‘Tous humains contre la faim’ (humans against hunger), which seems to me a more direct way of reaching people. (...) I prefer referring to brotherhood and humanity to mobilise people. That’s why I like the term ‘conviviality.’”*

However, the expression did come up in national newspapers during the 2017 presidential and legislative elections, particularly in relation to Macron’s presidential campaign.

During the campaign, and now in the run-up to the European elections of May 2019, the rhetoric of ‘openness’ has returned, even if it is deployed as a tool to stigmatise Macron’s opponents in France and abroad. Using the term did not stop Macron from incorporating key emergency powers into ordinary law in 2017, thereby dealing a potentially serious blow to individual fundamental rights.

Similarly, Macron’s repeated denunciations of ‘nationalism’ and, as he put it in a Quimper speech in June 2018, the “closed borders that some advocate”, coincided with an immigration bill that diminished protection for asylum-seekers (including minors) by making it more difficult for public services and non-governmental organisations to assist them<sup>4</sup>.

Such measures are not always unpopular in a country where politicians have long used immigration<sup>5</sup> to attract the many voters who are dissatisfied with the state of the nation and feel socially and economically vulnerable. It is worth noting that much of what the government has done is based on defining who is on the inside and who on the outside. It has done this by explicitly drawing the boundaries of how far rights should extend.

3 Comité Catholique contre la Faim et pour le Développement, CCFD

4 Human Rights Watch, 2018

5 Héran, 2017

All in all, the expression open society is rarely used. When it is, it is not used in the way that Popper meant.

Nevertheless, it is worth pointing out that although some of them have gone along with government policies that could be seen as undermining open society values, NGOs and public institutions have been promoting the core principles of a democratic and egalitarian society – and regularly advocate a wider application of democratic rights that would result in a more open society.

NGO leaders and public officials in charge of promoting fundamental rights regularly challenge the government and local authorities and criticise their actions. The French Ombudsman (*Défenseur des Droits*) and other independent administrative authorities like the *Contrôleur général des lieux de privation de liberté*<sup>6</sup> (in charge of guaranteeing human rights in prisons) are constantly making their voices heard.

The Constitutional Council, meanwhile recently admitted the principle of ‘fraternity’ as a legal category.<sup>7</sup> This is highly relevant as French legal institutions,

influenced by decisions of the European Court of Human Rights, are an effective channel to protect the core principles of a democratic society. In turn, these institutions create precedents that can clear the ground for an open society by helping redefine its boundaries – making them more inclusive and more porous.<sup>8</sup> Indeed, it is important to note that in France - not unlike in the US, though through a very different legal tradition - challenges by legal advocacy through independent administrative authorities and the courts have been more effective than advocacy that targets ministers, or MPs and their staff.

As for the concept of ‘civil society’, our interviewees referred to it regularly, although more than two-fifths of the survey’s respondents did not seem to know exactly what constitutes ‘civil society’. The most frequent answer to our question about who civil society organisations actually represent was “I don’t know” (see Table 1 below). The high number of “don’t knows” suggests that even if they refer to the civil society, most people do not fully understand its implications, and therefore do not know where they stand on related issues.

**TABLE 1**  
What civil society means to the French in row percentages

	Civil society organisations represent the interests of people otherwise not heard	Civil society organisations do not represent the interests of people otherwise not heard	I don't know
Some people think that civil society organisations represent the interests of people who are otherwise not heard by politicians. Others think that civil society organisations do not represent the interests of such people. Which of the following is closer to your opinion?	30	28	41
Number of respondents	1,041		

6 The *Contrôleur général des lieux de privation de liberté* is in charge of auditing French prison conditions and guarantees that the human rights of detainees are upheld and respected

7 [https://www.conseil-constitutionnel.fr/decision/2018/2018717\\_718QPC.htm](https://www.conseil-constitutionnel.fr/decision/2018/2018717_718QPC.htm)

8 See <https://www.conseil-constitutionnel.fr/nouveaux-cahiers-du-conseil-constitutionnel/la-constitutionnalisation-du-droit-au-respect-de-la-vie-privée> for a discussion on the actions of the French Constitutional Council for the protection of the right to privacy (‘the right to a private life’).

Our results suggest that “reading” France through the prism of the lexicon of an open society may be analytically misguided. This is perhaps not the best vocabulary through which to fight for the practices and ideas of openness.

## THE USE OF MORE EFFECTIVE LEGAL AND POLITICAL CATEGORIES

Our interviewees referred quite specifically to French legal doctrine and French political categories. ‘Equality’ was mentioned repeatedly by Jean Gaeremynck, member of the Council of State and former president of the French Office for the protection of refugees and stateless persons<sup>9</sup>, as well as by Sophie Latraverse, General Secretary of the French Ombudsman.

The principle of ‘equality’ is codified by law, and has framed jurisprudential decisions much longer than the relatively foreign concept of ‘discrimination’ (which is more prevalent in the Anglo-Saxon tradition). French courts condemn organisations for discrimination, but judges and policy-makers may also refer to other concepts, like equality, to effectively promote the rights of individuals.

*“There is a European debate on extending anti-discrimination law to include poverty [...] In France we already have a very strong legal definition of equality. Should we add poverty to this list, when we already have, in France at least, many public policies and programmes - with no equivalent in the United States or in the United Kingdom - based on the right to equality? [...] We shouldn’t systematically copycat reading grids from abroad. There is a tendency among Anglo-Saxons to replicate forms of advocacy specific to their legal tradition. Instead, we should encourage more comparative law.”*

Sophie Latraverse

The legal recognition of ‘fraternity’, the third element in France’s national motto (Liberty, Equality, Fraternity) is another illustration of the uniqueness of the French system. As mentioned previously, in July 2018 human rights activists scored a huge victory when the Constitutional Council enshrined the principle in law by stating: “The concept of fraternity confers freedom to help others for humanitarian purposes, without consideration for the legality of their stay on national territory” (Constitutional Council, 2018-717/718 QPC).

*“Introducing the principle of fraternity into law is a fantastic idea! In my job, which is about implementing constitutional law, the principles of equality and liberty have always been very useful, but until now we couldn’t refer to the principle of fraternity [...] Some people argued that fraternity was not a legal concept, but that’s absurd because it is referred to in the Constitution, our foundational piece of legislation. The lawyers’ excellent idea is to convince France’s Constitutional Council to give legal force to the principle of fraternity. I look forward to this because it will help ease tensions between the state - including its coercive functions like detention centres - and NGOs for whom the legal status of the people they help is irrelevant.”*

Jean Gaeremynck

Support for open society principles is thus not only enshrined in French law but is also being strengthened significantly. This is not necessarily done by advocating for an open society, but rather for the full application of principles that deliver the same goods, namely the inclusion of more people within France’s institutional boundaries.

It is therefore through the courts, but also through the specific use of a French democratic vocabulary, that the boundaries of society are expanding and the construction of a more open society is emerging.

# SUPPORT FOR OPEN SOCIETY PRINCIPLES

## DEMOCRATS OR OPEN SOCIETY SUPPORTERS?

The French widely accept the democratic principles of freedom of thought and the rule of law. Where they waver is on whom they apply to. There is still some way to go before French democrats become

open society supporters. On certain issues in particular, such as religious freedom, France still clings to its conviction that the Republic (which was founded against religious privilege, on the basis of national fraternity and the pursuit of equality) has a monopoly on the truth that allows it to exclude so-called ‘obscurantism’.

**TABLE 2**

French respondents' attachment to the principles that constitute an open society (in row percentages)

	ABSOLUTELY ESSENTIAL	RATHER ESSENTIAL	RATHER NOT ESSENTIAL	NOT AT ALL ESSENTIAL
That everyone can express their opinion freely	52	42	5	1
That all political views of the population may be represented in parliament	36	50	11	3
That government-critical groups and individuals can engage in dialogue with the government	26	58	14	3
That the rights of minorities are protected	25	54	16	4
That the media can criticise the government	36	42	16	6
That everyone can practise their religion freely	33	42	17	8
That people who have recently come to live in France should be treated equally	20	46	22	13
Number of respondents	1,041			

Looking at Table 2 above, the statements about democracy attract vast majorities, with respondents considering them as “absolutely essential” or “rather essential”. Freedom of thought was supported enthusiastically, although this did not apply to religious freedom. The French concept of *laïcité* (its particular form of activist state secularism) (Bauberot 2012) plays a role here: in a secular republic, religious freedom is considered a private matter, and the French – across the political spectrum and potentially even more so at the progressive end – are committed to secular public institutions, and suspicious of politically active religious groups.

The statement “people who have recently come to live in [France] should be treated equally” has the lowest percentage (although it still attracts almost two-thirds of positive responses). Of the statements on offer in that section of the poll, this is the only one that really relates to an open society, rather than just a tolerant or democratic one. How far ‘out’ do the principles extend? How far does a society extend its boundaries when offering tolerance and democratic rights?

An interesting picture emerges when this is taken in conjunction with Table 3, below (on statements that run contrary to an open society).

Opinions here are more fragmented: for some statements, notably on the religious practice of

non-Christians, respondents are almost evenly spread out. Even on the other questions, it is clear that for each nearly half the respondents are willing to support statements that contradict any definition of an open society. Again, it is on the questions directly related to the boundaries of an imagined French society that respondents seem the most willing to oppose an open society: fewer immigrants, religious practice of non-Christians, citizenship.

Refreshingly, the same-sex question seems to garner no support.<sup>10</sup> But again, it is worth noting that that particular question is more about tolerance and democratic rights than openness and the nation’s boundaries.

The statement “As few immigrants as possible should come to France” is the negative view that attracts the most support (58 percent). Respondents who support this statement tend to be older and less educated. But it is still worth pointing out that between a quarter and a fifth of those who consider the statement “absolutely essential” or “rather essential” have at least one university degree. So while we know from other research<sup>11</sup> that education enhances support for tolerance and democratic norms, it does not correlate as strongly with openness. Conversely, lower levels of education correlate with support for more closed societies and right-wing populism.

10 It is worth noting that, as pointed out in various reports including the 2017 CNCDH movement, the demand for increased state authority is not at all premised on the growth of socially conservative attitudes. Indeed, these have been declining steadily.

11 On France, see [https://www.lemonde.fr/elections-legislatives-2017/article/2017/06/15/la-victoire-sans-partage-de-macron-a-pu-susciter-le-decouragement-des-electeurs-frontistes\\_5145206\\_5076653.html](https://www.lemonde.fr/elections-legislatives-2017/article/2017/06/15/la-victoire-sans-partage-de-macron-a-pu-susciter-le-decouragement-des-electeurs-frontistes_5145206_5076653.html). See also, C. Fieschi, M. Morris and L. Caballero-Sosa, *Recapturing the Reluctant Radical*, Counterpoint, 2012. <http://counterpoint.uk.com/wp-content/uploads/2013/02/E-version-Recapturing-the-Reluctant-Radical-September-2012.pdf>. See also <https://www.educationandskillsforum.org/fr/news-blogs/the-rise-of-populism-is-a-failure-of-education-yes-or-no>. On the Netherlands, see <https://www.ft.com/dutchvoting>.

**TABLE 3**

French respondents' endorsement of statements that contradict the principles of an open society (in row percentages)

	ABSOLUTELY ESSENTIAL	RATHER ESSENTIAL	RATHER NOT ESSENTIAL	NOT AT ALL ESSENTIAL
That as few immigrants as possible come to France	27	31	26	16
That the government ensures media reporting always reflects a positive image of France	13	41	32	15
That non-Christians only visibly practice their religion at home and in their places of religious worship	27	25	22	26
That the right to citizenship in France is limited to people whose parents hold French citizenship or who are ethnically French	19	32	28	22
That same-sex couples do not kiss each other in public	12	13	24	51
Number of respondents	1,041			

## WHAT PRICE SOLIDARITY?

*Voices on Values* data reveals that when the French agree with attributes associated with an open society, they can also tend - though the correlation is weak - to agree with those negatively associated with it.<sup>12</sup> In other words, even those people who define some principles of an open society as important are comfortable with some views that can seem to

contradict it. For example, people who support the principles of an open society may nevertheless also support restrictions on practising non-Christian religions. Many act as if they can have their open society cake and eat it. In the French context, and in line with our research, we might conclude that the French want their democratic cake - but not necessarily an open society icing.

12 The correlation coefficient (Pearson's R) between the sums of scores from positive and negative attributes equals - 0.15. For a more detailed explanation of the survey's methodology please refer to the *Voices on Values* report by Eichhorn and Mohr (2019): *The Hidden Majority: How most Europeans care about open society values*. Open Society European Public Institute and d|part.

Commitment to equality and solidarity, in particular, are borne out in Table 4, below, which illustrates that the French seem unwilling to separate material conditions from fundamental rights. They seem to want and value both equally. Respondents were asked about the markers of a good political system, and whether they considered freedom, democracy and the opportunity to express oneself as more important or as important as living standards. A vast majority said they would not trade the former for better living standards.

This unwillingness to choose between the two suggests that democratic norms are extremely well entrenched. But at the same time, these are seen as intrinsically bound up with living standards. This may explain why the French are more reluctant to embrace openness when it is linked with national solidarity rather than human solidarity. This is where advocacy work needs to be done. The decision to include the principle of ‘fraternity’ in the context of migration is a step that guarantees that the boundaries of national solidarity are pushed further out.

**TABLE 4**

**French respondents' refusal to trade off open society principles for better living conditions**

	<b>Freedom, democracy, the opportunity to express oneself and one's opinions</b>	<b>Living standards, price of goods and availability of services</b>	<b>Both are equally important</b>	<b>Hard to say</b>
When some people evaluate the current political system, they refer above all to freedom, democracy, the opportunity to express themselves and their opinions. Other people think about living standards, the price of goods and availability of services. Which of the two is more important to you?	27	31	26	16
Number of respondents		1,041		

## DEMOCRATS – BUT NOT NECESSARILY OPEN SOCIETY SUPPORTERS

To test how robust French respondents' attitudes to an open society were, we asked them to assess its principles when compared to claims about economic security, political stability, or the protection of cultural values and traditions.

**TABLE 5**

French respondents' willingness to trade off open society principles for alternative claims (in row percentages)

OPEN SOCIETY PRINCIPLES	Principle more important	Equally important	Concern more important	ALTERNATIVE CONCERNS
That people who have recently come to live in France should be treated equally	15	23	60	That state policies always aim at improving the economic wellbeing of citizens
	18	27	52	That social cohesion is safeguarded
That everyone can practise their religion freely	22	23	53	That France's cultural traditions and values are protected
	36	27	34	That all people living in France share the same cultural values
That everyone can express their opinions freely	46	21	31	That Christian values are not offended
	49	29	20	That ethnic and national minorities are not offended
That government-critical groups and individuals can engage in dialogue with the government	34	25	39	That the government ensures political stability
	38	24	37	That government policy always focuses on maximising economic growth
That the rights of minorities are protected	20	25	53	That the state ensures that the interests of the majority are safeguarded
	20	24	54	That the state ensures its citizens never feel foreign in their own country
That all political views can be represented in parliament	25	24	49	That all parties represented in parliament adhere to democratic principles
	44	25	30	That there is always a stable majority within parliament
That the media can criticise the government	47	27	24	That the government has a free hand in implementing its policies decisively
	35	25	37	That government decision-making is mostly guided by experts
Number of respondents				1,041

Table 5 seems to bear out our preliminary conclusion: respondents were more inclined to trade off attributes relating to newcomers and minorities than those about the free expression of (democratic) opinions. Again, the boundaries of democratic society appear less permeable than an open society would mandate.

Responses are strikingly volatile on the subject of religious freedom (14 percentage points difference between the answer choices “more important”), parliamentary representation of *all* political opinions (19 percentage points difference) and the critical role of the media (12 percentage points difference).

This may indicate disagreement about where the boundaries of an open society are, rather than about its founding principles: it is about who is excluded from these principles, and who is entitled to benefit from them - not so much about the principles themselves. Most respondents praise open society values but nevertheless sometimes contradict them. When doing so, they draw lines between those who should benefit from certain rights and principles and those who are not “like us”, and to whom consequently they do not apply. In other words, many French respondents seem to favour a democratic society that is not necessarily very open.

# GRADATIONS OF SUPPORT

In terms of their support for aspects of an open society, our respondents fall into two groups. Classifying people into *cheerleaders* or *stalwarts* goes some way towards explaining why we appear to have contradictory answers – over and above the qualified support for openness. It also creates useful guidelines for those wishing to engage with the French public.

## **CHEERLEADERS: NO BULWARK AGAINST OPEN SOCIETY ENEMIES**

*Cheerleaders* consider all statements associated with an open society as “absolutely essential” or “fairly essential”<sup>13</sup>. They represent roughly a third of respondents, and what they have in common is education levels rather than gender, age or income.

**TABLE 6**

***Cheerleaders* and educational attainment (row percentages)**

	LOW	MEDIUM	HIGH	NUMBER OF INDIVIDUALS
<i>Cheerleaders</i>	25	36	41	359
Rest of the studied population	75	64	59	682
Number of individuals	280	453	308	1,041

Low refers to secondary education; medium refers to at most two years of post-high school education; high refers to at least three years of university education

The correlation between the systematic endorsement of open society views and higher educational levels is no surprise, even if agreeing with positive statements does not necessarily mean acting on them (Caveng, Darbus, Denord & Thine 2018). And, despite their overall positive attitudes, 80 percent of *cheerleaders*

are inclined to label as “absolutely essential” or “fairly essential” at least one of the statements that contradicts the principles of an open society. This is slightly less than the ratio for all the respondents, which is 85 percent. It makes *cheerleaders* vocal but not necessarily reliable in their support of an open society.

13 The category is composed of respondents who consider it “absolutely essential” or “fairly essential” for a good society that “people who have recently come to live in France should be treated equally”, that “everyone should be able to practice their religion freely”, “to express their opinion freely”, that “government-critical groups and individuals should be able to engage in dialogue with the government”, that “the rights of minorities be protected”, that “all political views of the population be represented in parliament”, and that “the media should be able to criticise the government”.

## STALWARTS: STEADY BUT POORLY ORGANISED

Unlike *cheerleaders*, who are more inclined to speak up but are seldom personally committed, *stalwarts* never espouse views that oppose an open society's core principles. They are more reliable than *cheerleaders* when it comes to living by open society rules, but account for only 15 percent of respondents. Stalwarts tend to be younger and better educated. These steady supporters of an open society consider freedom of thought more important than criticism of the government by NGOs, unions or political parties.

One key characteristic of stalwarts is that they would rather speak out individually than express their views collectively. Such an attitude probably signals a misunderstanding – or lack of understanding – of the role played by NGOs, unions, courts and independent administrative authorities like the Ombudsman in the process of establishing open society rules. This disregard for collective action may also be a consequence of a political system that promotes the stability of presidential majorities rather than diversity of expression through parliamentary representation. Or it may be down to a lack of trust in the media, which in France is mainly funded by companies which also operate other businesses.<sup>14</sup>

It is an interesting conundrum, because the French are not shy about taking part in public protests. However, protests are generally staged by well-organised and/or powerful groups like trade unions and students. Furthermore, the big demonstrations that took place in Paris (and in other French cities) in the aftermath of the *Charlie Hebdo* massacre were based on reliable and deeply-embedded cultural

codes of the Republic. The recent *Gilets Jaunes* protests are a fascinating case: they are a real hybrid (and perhaps harbingers of things to come) in that they have refused any formal link to trade unions or any formally organised group. But on the other hand, they use the slogans and the references of a well-established French revolutionary tradition (the peasant *Jacqueries*, but also the Commune of 1871). Not to mention the use of *Cahiers de Doléances* (literally 'gripe notebooks'), an 18th century practice used to communicate grievances to the King.

Again, it is worth noting the importance of the relevant political and legal vocabulary. NGOs advocating tolerance and human rights have so far been unable to mobilise the public in significant numbers – at least not recently. The biggest demonstrations and most successful anti-racist protests took place in the mid-1980s under the coalition banner of anti-racist NGOs, known as SOS Racisme.<sup>15</sup> They organised massive demonstrations under the slogan 'Touche pas à mon pote' (hands off my buddy).

Worth noting, too, is that these protests were organised just as the far-right's Front National and Jean-Marie Le Pen were receiving increased media coverage (in the aftermath of the 1984 elections and early local successes). The organisers also said they were inspired by the *Solidarnosc* movement in Poland – a strong trade union movement, something that is still important to the French. Finally, the slogan was an explicit appeal to 'fraternity'.

But as pointed out earlier, the legal apparatus – in part as a result of NGO pressure – is becoming much more successful at marshalling key concepts and categories that can establish open society norms via French social, political and above all legal codes.

<sup>14</sup> <https://www.monde-diplomatique.fr/cartes/PPA>

<sup>15</sup> In part organised and supported by the Socialist governments of Francois Mitterrand.

## THE LEFT-RIGHT DIVIDE STILL MATTERS

In a partisan landscape that has always been difficult to read<sup>16</sup> and that has recently been shaken up by Macron's République en Marche, the divide between left and right still matters – especially when it comes to predicting opposition to statements not associated with an open society.

Most of our survey respondents espouse open society principles, but self-declared left-leaning people are more likely to do so, and are much less likely to assert opposing principles: as respondents move further to the right, they are more likely to evaluate open society values as less important. Moreover, self-declared right-wingers are more likely than self-declared left-wingers to compromise on these principles by trading them off for other values. In short, whilst there is a left/right difference in terms of support for an open society, there is also a left/right difference in the consistency of that support and propensity to trade off.

**TABLE 7**

French respondents' political self-positioning

	LEFT					CENTRE					RIGHT					NA
	5+	4+	3+	2+	1+	1+	2+	3+	4+	5+	1+	2+	3+	4+	5+	
Percentage	6	3	6	6	6	27%	7	7	8	4	6	6	6	6	15	
Number of respondents	1,041															

<sup>16</sup> In part because of ingrained left-wing opposition to religious representation of any kind in the public space.

# TWO AREAS WHERE PRINCIPLES OF OPENNESS ARE MOST CHALLENGED

The two areas where the French are most likely to go against open society principles are migration (see Table 3) and law enforcement (see Table 8, below).

## INSISTENCE ON SECURITY

After the 2015-17 terror attacks, successive French governments boosted the powers of the police and intelligence services, while weakening the rights of suspects and defendants. Of the European countries hit by attacks – Belgium, Denmark, Germany, Spain, Sweden and Britain – only France imposed a state of emergency and then wrote the bulk of its crisis measures into law, with a sunset clause by 2020. The provisions now make it easier for MPs to infringe

on individual freedoms. But more to the point, it is unlikely that any politician will take the risk of being accused of weakening police and intelligence agencies in the context of the fight against terrorism.

The results of our survey suggest that French people do not consider these developments to pose a threat to society. A majority of respondents even favour the reintroduction of the death penalty for individuals involved in acts of terrorism (see Table 8).

Sixty-nine percent also agree with the implicit endorsement by Florence Parly, the French Defence Minister, of targeted killings abroad of French citizens involved in ISIS-related violent acts (see Table 9).

**TABLE 8**

**French citizens' attitude to the reintroduction of the death penalty**

	<b>The death penalty should be reintroduced</b>	<b>The death penalty should not be reintroduced</b>	<b>I don't know</b>
After several terrorist attacks committed on French territory, some people asked for the death penalty to be reintroduced for people convicted of having being involved in acts of terrorism. Others remain strictly opposed in the name of human rights. Which of the following opinions do you agree most with?	52	37	11
Number of respondents	1,041		

**TABLE 9**

French respondents' defence of targeted killings of French citizens fighting in Syria (row percentages)

	COMPLETELY AGREE	SOMEWHAT AGREE	NEITHER AGREE, NOR DISAGREE	SOMEWHAT DISAGREE	COMPLETELY DISAGREE	I DON'T KNOW
To what extent do you agree or disagree with the following statement by the French Defence Minister, made on October 15, 2017: "If some French citizens, who have fought in Syria die there, all the better"?	42	27	17	4	5	5
Number of respondents	1,041					

In its 2017 annual report on the state of xenophobia and racism in France, the Commission Nationale Consultative des Droits de l'Homme (CNCDH, France's principal agency for the protection of human rights) highlighted the fact that while the acts of terrorism perpetrated on French soil had not appeared to affect xenophobic and racist attitudes directly, they did lead to a "massive demand for authority".

The report quotes 66 percent of respondents as saying that French courts are "not harsh enough", and an overwhelming majority are willing to grant the police special powers of investigation in cases of suspected terrorism.<sup>17</sup> Our results are hardly surprising in such a context.

In contrast to survey respondents, our expert interviewees expressed concern about a possible "security spiral". But they also mentioned positive consequences. The general secretary of the French Ombudsman pointed to an unexpected silver lining: far more people than before know about the existence of her institution:

*"If the state of emergency hadn't been imposed, we could never have intervened as much on fundamental rights. That simply hadn't been the Ombudsman's focus. But our interventions triggered a new logic, and now we are systematically asked to intervene. That doesn't mean that everyone listens to us, but we are far more in demand. The legislature and ministers systematically ask us for hearings and consultations. Our approach has also influenced working methods. Now we meet regularly with the Court of Appeal, the Conseil d'Etat [the French administrative Court of Appeal]. If we think back to when HALDE was created [in 2011, the Défenseur des Droits replaced the Haute Autorité de Lutte contre les Discriminations et pour l'Egalité], it was unthinkable that an independent administrative authority could be involved in judicial matters. So we've seen some positive legal change from the State on the issue of fundamental rights."*

Sophie Latraverse

17 Rapport 2017, CNCDH, pp. 35-38

Patrice Spinosi, a lawyer for France’s Supreme Court (Cours de Cassation), also insisted on the importance of the Ombudsman’s action. All these developments have given the Ombudsman opportunities to criticise public authorities. And judges, and to a lesser extent politicians, are more open to legal arguments developed by independent administrative authorities like the Ombudsman than by activists.

This supports one of the key findings of the *Voices on Values* project, which is the importance of legal advocacy. While being forced to fight government policy is not a cause for celebration, the fact that these agencies do so and do so effectively is important. It is also worth underscoring because France has a reputation for protest and demonstrations, but in the pursuit of open society principles and human rights the most effective approaches are legal action and a commitment to enshrining political principles into law (such as the successful request to turn ‘fraternity’ into a legal category). In a country that has a reputation for

taking to the streets at the drop of a hat, advocacy organisations must acknowledge the success of political-legal action.

## THE MIGRATION RIDDLE

A key measure of attitudes towards an open society is the way migrants are perceived and treated.

In France, the number of migrants from non-EEA countries has increased at a slower pace than in neighbouring EU countries, with a 24 percent increase in non-EEA migrants in 2014-17 and a 71 percent in humanitarian permits (refugee status and subsidiary protection, see Appendix 1). During those four years, nearly five times more people sought asylum in Germany than in France. Yet, as Table 10 below shows, a majority of respondents consider that the French government should not do more to welcome migrants.

**TABLE 10**

**French respondents' opposition to the government undertaking more actions in favour of migrants (row percentages)**

	COMPLETELY AGREE	SOMEWHAT AGREE	NEITHER AGREE, NOR DISAGREE	SOMEWHAT DISAGREE	COMPLETELY DISAGREE	I DON'T KNOW
To what extent do you agree or disagree with the following statement: “The French government should do more to welcome migrants”	9	13	22	16	38	3
Number of respondents	1,041					

The survey does not allow us to dig deep enough into these attitudes to understand what motivates them. Other sources cite respondents' wish to see France step up its international aid to address problems in situ rather than allow a situation to develop in which people have to leave their home countries. Another interpretation is that, like many other Europeans, the French believe the issue should be handled by the EU, and not by national governments.

Thirty years of anti-migration rhetoric, which has permeated all parties as well as the media, have not helped. In a country in which many are desperately worried about terrorism (top of the list of preoccupations in 2017), but also unemployment (second) and poverty (third),<sup>18</sup> any intimation that the government might divert from an exclusive focus on French citizens is problematic. The data does not allow us to assess how much of this can be understood as xenophobia. What we do know, thanks to the annual CNCDH reports, is that since 2013 racist, anti-Semitic and xenophobic attitudes have declined.<sup>19</sup>

Our interviewees had different views about the discrepancy between the relatively moderate influx of migrants (Appendix 2) and its massive political resonance. NGO executives and staff contrast extremely localised problems (key neighbourhoods in Paris, Lyon, Marseille, Nantes and Lille, the Calais region, the border between Italy and France) with the broad, catastrophe-themed public rhetoric

on immigration that has dominated national politics for decades<sup>20</sup>.

They also argue that central administrations, local authorities and NGOs have the resources and know-how to collectively cope with the current influx of migrants, but that local and even personal in-fighting (between the Mayor of Paris and the Interior Minister, for example) are blocking decisions and policy-making. The failure to cope is then used as a tool to dissuade migrants from coming to France and locals from welcoming them.<sup>21</sup> There is an underlying thread in the discussions we had that points to the fact that what really worries people is the diversion of much needed resources away from basic public services and into migration and integration management. In this respect, the impression (as in many other European countries) is that a bold defence of, and investment into public services, would reassure a portion of the public and allow them to be more open to openness.

Fabrice Peigney, special advisor to the Commissioner General for Territorial Equality<sup>22</sup>, and activist academic Eric Fassin emphasised a more fundamental political shift. Fassin thinks the decoupling of progressive politics from neo-liberal economics is a major factor. There was a moment in French and European politics when the promises of neo-liberal economics were no longer associated with the values of an open society. If the two once went hand in hand, they no longer do:

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18 Rapport 2017 CNCDH, p. 35. Note that this no longer seems to be the case, and that poverty and unemployment seem to come ahead of terrorism in late 2018. See the latest BVA opinion poll (14 December 2018) on attitudes toward the upcoming EU elections <https://staticswww.bva-group.com/wp-content/uploads/2018/12/Les-Fran%C3%A7ais-l'UE-et-l%C3%A9lection-europ%C3%A9enne-2019-Pr%C3%A9sentation-des-r%C3%A9sultats-14-d%C3%A9cembre-2018-Diffusion.pdf>

19 Rapport 2017, CNCDH, pp. 40–41. One key measure is the increasing proportion of people who support voting rights for foreigners.

20 On the origins in France of the infamous slogan “[X] million unemployed, = [X] million immigrants too many”, see Lebourg and Beaugard (2012).

21 In a study funded by Open Society Initiative for Europe, Counterpoint witnessed precisely these dynamics in Lille, and the opposite – goodwill and excellent organisation – in Rennes. <http://counterpoint.uk.com/bonne-annee-local-realities-of-migration-emotions-institutions-conflict-and-cooperation/>

22 Commissariat Général à l'Égalité des Territoires, CGET.

*“There was a historic moment when neo-liberalism was sold to member states by saying that neo-liberalism was all-out openness: it was about opening markets and borders. Today the rhetoric of neo-liberalism as an open society has ended. In any case, there never was an inevitable link between the two. It seems to me that xenophobia and racism are used to distract people. [...] People in public office no longer consider that we can be distracted by friendly, empathic political decisions. This was the accusation levelled at the [former] socialist government: that the debate about gay marriage [in 2013] was designed to distract voters from more ‘serious’ economic issues. That may be true, but I’d rather be distracted by same-sex marriage than by stigmatisation of the Roma.”*

Eric Fassin

Fassin’s words capture French progressives’ underlying suspicion of ‘openness’. For many on the French left, capitalism and progressive values are at odds. The veiled accusation is that openness is an attempt to legitimise capitalist economics; hence their suspicion of an open society agenda, and the trade-offs they are willing to make. They are unwilling to separate economic security from political expression and, in Fassin’s quote, he points to the broken link between neo-liberalism and open societies.

It is worth keeping this in mind because it gives French progressive attitudes their particular flavour, and accounts for some (though by no means all) of the contradictions and difficulties the expression ‘open society’ creates in the context of French advocacy. Moreover, it is an invitation for open society activists to take stock of the current dynamics - the rise of authoritarian forms of neo-liberalism in Europe, as well as the fact that demands for protection and security (both economic and cultural) seem to be driving much of the populist vote across the continent.

# CONCLUSION

In France, support for the core principles of an open society appears strong. However, it is the *democratic* core of open society principles - rather than those concerned with openness - that appear to be most entrenched.

The most promising initiatives to promote open society values – those that have so far met with the most success – have sought to address such principles constitutionally and through the culturally specific lexicon of the Republic: liberty, equality and fraternity. Indeed, one of the most striking findings from our research is how well the legal apparatus is upholding democratic values and creating pressure for more openness in applying these values widely. It is on that ground that NGOs and CSOs will make most headway.

Populist parties understood years ago the need for cultural specificity of terms and appeals to the Republic. Their references – their framing – are to the (rather progressive) values at the heart of French political attitudes. The FN (now RN) lauds the Republic, as it does fraternity and solidarity with those who are least well off. Defenders of open society principles need to recapture this terrain. The enshrinement of fraternity as a legal principle should serve as a model, and an important clue as to the type of frames and narratives that are most effective in France.

# RECOMMENDATIONS

- In France, the defence of open society values happens mostly through the reinforcement and extension of legal provisions. NGOs will be more successful in promoting and safeguarding an open society by working with the legal system, rather than advocating for changes in attitudes.
- Advocates of an open society should insist on its principles, but not necessarily on the expression itself. The use of a political lexicon that is already part of French political language is a more effective way of promoting open society values.
- Given the systematic link between open society values and open economies, we suggest that the expression ‘open society’ is unhelpful for raising awareness and action. CSOs and NGOs might be better advised to focus on the values French people are most attached to: freedom of thought, economic equality and fraternity/solidarity, and to use those as a basis from which to push for the extension of open society norms.
- The democratic norms that are part of open society principles are firmly entrenched – including a strong allegiance to decent standards of living and solidarity. Advocacy that recognises their importance and builds on these in order to promote a more open society will be more successful.

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# APPENDIX

## METHODOLOGY

A representative survey using online panels and quota sampling methods was administered for over 1,000 respondents in each project country (1,040 in France) between February 12 and March 5, 2018.

The survey first asked respondents to rate the importance of seven statements reflecting values that the researchers identified as characteristics of open societies, such as the equal treatment of newcomers, freedom of speech and minority rights. Respondents were asked to do the same for seven characteristics that tend to appear in closed societies, such as limiting immigration and citizenship rights. The decision about which attributes to include was taken by the researchers from the six countries involved, who aimed to include key issues in current political debates in all countries. A full discussion of the conceptual ideas behind these decisions and the debates they correspond to can be found in the project's Key Insights Report "*Voices on Values: How European publics and policy actors value an open society*"<sup>23</sup> which sets out the detailed rationale and includes a full list of attributes.

Using respondents' answers and based on dimension reduction techniques<sup>24</sup>, we could identify two separate factors (open and closed society attributes respectively) that were only weakly correlated with each other. We therefore computed two summary measures that combine the scores for each set of seven attributes and that are used in our analyses.

For full details, please refer to the *Voices on Values* publication "*The Hidden Majority: How most Europeans care about open society values*"<sup>25</sup>.

After analysing how people evaluated both different characteristics associated with open and closed societies in their own right, we tested how robust people's evaluations of the former were when juxtaposed with other concerns. For this purpose, in the second part of the survey, we presented respondents with the seven characteristics associated with open societies again, this time opposed to other concerns people might have, such as economic security, political stability or the protection of cultural traditions. Respondents were then asked to evaluate the relative importance of the two alternative choices: they could choose one or the other as more important, or say that both were equally important. These trade-off experiments are artificial in the sense that they contrast values and concerns which are not necessarily in contradiction, but which are often presented that way in current public debates<sup>26</sup>. Additionally, general and country-specific correlate questions were asked that could be used for further analyses.

Alongside the survey analyses, we conducted eight 'elite' interviews, in which we asked our interviewees about what they perceived as the challenges to an open society in France, and to discuss some of the survey's findings and identify potential dissonances between their views and those of the public. We spoke to the following people:

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- 23 Cf. Eichhorn, J., Kupsch, V., Molthof, L. and Mohr, M. (2019). *Voices on Values: How European publics and policy actors value an open society*. Open Society European Public Institute and d|part.
- 24 For further information on the methods applied in this study, visit <http://voicesonvalues.dpart.org/>.
- 25 Cf. Eichhorn, J. and Mohr, M. (2019) *The Hidden Majority: How most Europeans care about open society values*. Open Society European Public Institute and d|part.
- 26 Cf. Eichhorn, J., Kupsch, V., Molthof, L. and Mohr, M. (2019). *Voices on Values: How European publics and policy actors value an open society*. Open Society European Public Institute and d|part.

Guy Aurenche, criminal lawyer and former President of the Catholic Committee against Hunger for Development (CCFD-Terre Solidaire (2008-2016)

Fabrice Peigney, Special Advisor to the Commissioner General for Equality of the Territories (Commissariat Général à l'Égalité des Territoires)

Jean Gaeremynck, Member of the Conseil d'Etat (France's highest administrative jurisdiction) and former president of the French Office for the Protection of Refugees and Stateless people

Sophie Latraverse, General Secretary of the French Ombudsman (Défenseur des Droits)

Eric Fassin, professor of sociology, Department of Political and Social Sciences at Paris 8 University

Louis Barda, coordinator of the Paris operations for Médecins du Monde

Sébastien Lyon, Managing Director UNICEF France

Patrice Spinosi, lawyer at the Cassation Court and the Conseil d'Etat, in charge of the “principle of fraternity” case heard by the Constitutional Council.

# APPENDIX II

## FIGURE II.1

### Motives for first admission in France

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017*	2014-17 TREND
<b>Economic</b>	11,751	21,352	20,185	18,280	17,834	16,013	17,800	19,054	20,628	22,982	27,209	42.8%
<b>Family</b>	87,537	83,465	85,715	83,182	81,172	87,170	93,714	92,326	90,113	89,124	87,109	-5.7%
<b>Students</b>	46,663	52,163	58,586	65,281	64,928	58,857	62,815	64,996	70,023	73,644	<b>88,095</b>	35%
<b>Others</b>	10,511	9,667	11,343	11,572	11,633	12,624	13,148	13,742	13,866	14,741	14,265	3.8%
<b>Humanitarian</b>	15,445	17,246	18,581	18,220	17,487	18,456	17,916	20,822	22,903	29,862	<b>35,825</b>	72.1%
<b>Total</b>	171,907	183,893	194,410	196,535	193,054	193,120	205,393	210,940	217,533	230,353	<b>262,000</b>	24.2%
<b>Yearly evolution [(Y+1)-Y]/Y</b>	7.0 percent	7.0 percent	5.7 percent	1.1 percent	-1.8 percent	0.0 percent	7.0 percent	6.4 percent	2.7 percent	3.1 percent	5.9 percent	13.7 percent

\* In bold are definitive numbers for 2017. The rest are official estimates.

Source: Ministry of the Interior, DSED, June 12, 2018; non EEA countries, metropolitan France

This table is relevant for a number of reasons. First, it shows that there was indeed an increase in the number of demands for admission to France, but at 24%, this is hardly the ‘unstoppable wave’ that is often depicted. Second, and most importantly, the numbers clearly show that while the debate has been focussed on refugees vs economic migrants, the vast majority of requests concern either family motives or student visas. Humanitarian reasons are nowhere near as significant in numbers. This is important in a number of ways. First and foremost, it suggests that any fall in the number of migrants would have to address family motives (and this is

not just about family reunification but also about the right to marriage – a fundamental right) and student demands. Yet authorities have been reluctant to discuss this. We suggest this is because while people are almost invariably comfortable with granting asylum to people whose lives are in immediate danger (humanitarian refugees), they are much less so when it comes to granting rights on family, educational or economic grounds. Here, too, it would seem that most people are happy to go with the bare democratic minimum, but much less happy to share the spoils of their prosperous society with ‘outsiders’.

**FIGURE II.2**

Number of positive responses (refugee status and subsidiary protection) per millions of inhabitants

	Number of applications for asylum, in 2016	Percentage of positive responses, in 2016 (first court and appeal, including subsidiary protection)	Number of positive decisions (refugee status + subsidiary protection) / million of inhabitants, in 2016 and 2017 (in brackets)
<b>France</b>	<b>128,775</b>	<b>27%</b>	<b>527 (608)</b>
<b>Germany</b>	754,950	59%	5,418 (3,949)
<b>Greece</b>	23,990	36%	792 (1,114)
<b>Hungary</b>	5,880	7%	44 (131)
<b>Italy</b>	89,985	39%	524 (579)
<b>Poland</b>	3,780	10%	10 (15)
<b>EU 28</b>			1,393 (1,055)

Héran 2018 (<https://www.college-de-france.fr/site/francois-heran/course-2018-06-13-10h00.htm>), based on Eurostat data**FIGURE II.3**

Number of positive responses (refugee status and subsidiary protection) per millions of inhabitants

	Number of applications for asylum in 2016	Percentage of positive responses in 2016 (first court and appeal, including subsidiary protection)	Number of positive decisions (refugee status + subsidiary protection) / million of inhabitants in 2016 and 2017 (in brackets)
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Héran 2018 (<https://www.college-de-france.fr/site/francois-heran/course-2018-06-13-10h00.htm>), based on Eurostat data

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