

Towards a Definition of French Secularism

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In a previous article, I examined the questions raised by the 1905 law on the separation of church and state and its possible amendment to bring it into line with current conditions and respond to the problems posed by Islam.¹ The celebration of the centenary of this law, combined with the presence of a significant Muslim community in France, have reopened the debate on secularism [*laïcité*] as a matter of urgency. This debate is no longer of interest exclusively to specialists in various disciplines (history, law, philosophy, sociology, etc.), but has entered the public sphere and now concerns the highest instances of the state (the President of the Republic, the government and parliament). In these circumstances, some further thought on secularism is indicated, in order both to clarify the notion and its content and to examine its practical application.

Secularism once seemed to be definitively established and universally accepted, but it has emerged markedly transformed from the debate over it in the last fifteen years. In fact, very distinct conceptions of it are proposed, which sometimes entail different, even opposed, consequences. People interpret it as they see fit, according to their situation, needs or desires. They differ on the way in which it should be applied in certain concrete situations. Specialists themselves have different visions of it – which does not prevent them from extending its meaning significantly. The mass of studies devoted to it (dozens of books and hundreds of articles) actually ends up obscuring the idea, rather than clarifying it. It helps to relativize it and render it uncertain, by

distancing it from its true meaning. In short, secularism is no longer a simple and clear idea, easy to understand and apply. It has become a fluid, flexible notion, whose content can be extended and which can be variously interpreted. It thus risks being modified, altered, or even distorted. Under the guise of rethinking and renovating it, it can be weakened, twisted, unconsciously forgotten, or cleverly hollowed out. That is why it is important to ponder its exact nature and propose a precise definition of it, indicating the practical consequences that follow.

The Tendency to Expand Secularism

In truth, it is not easy to provide a satisfying definition of secularism, even though several definitions already exist.² Of course, it can be said that it consists either in the separation of state and religion, or in state neutrality in religious matters. People then refer to secularism-as-separation and secularism-as-neutrality, without knowing whether these definitions are identical or if one is better than the other. In any event, they have the merit of being simple and clear and are in principle acceptable. But they are usually found to be inadequate, incomplete, rather narrow, too sparse. They also contain the flaw of referring to the state, which does not redound to their advantage given the disaffection currently surrounding the state. Attempts are then made to enrich secularism by attributing a more substantial content to it and giving it a very broad extension. This is a general trend, which has emerged increasingly over the last fifteen years, to the extent that it has become dominant and even exclusive. It consists in assimilating secularism to various notions that are more or less connected with it, but unquestionably different from it: freedom of conscience and religion, tolerance, pluralism, equality, reason, democracy, and so on. In this way, people seek

¹ Cf. Maurice Barbier, 'Laïcité: questions à propos d'une loi centenaire', *Le Débat*, no. 127,

to give it a positive content and a concrete image, so as to render it attractive and engaging. In fact, while claiming to defend and promote secularism, this approach runs a high risk of misinterpreting it, transforming it, or even surreptitiously discarding it.

A recent, flagrant example of this tendency to broaden secularism inordinately is provided by the report of the Stasi Commission (December 2003), which was charged with clarifying the notion and examining its application, and which contained several recognized experts on the subject. In fact, the report presents secularism in a very confused manner, inflating it artificially and extending it significantly. In its introduction, it announces that it ‘rests on three inextricably linked values: freedom of conscience, equality in law of spiritual and religious persuasions, neutrality of the political authorities’. This formulation is already highly debateable, because it inappropriately includes freedom of conscience and the legal equality of religions in secularism. Moreover, it restricts neutrality to the political authorities, whereas it concerns the whole of the state or public sphere. To add to the confusion, the report then proposes two distinct analyses of secularism in its first two parts, which have manifestly not been rendered consistent. It first of all presents secularism as a ‘universal principle’ constructed by history and then as a ‘legal principle’ based on various texts. These two analyses are markedly different and sometimes divergent. The first, which is more philosophical, relativizes state neutrality, whereas the second, which is wholly juridical, makes it an essential component of secularism.

November/December 2003, pp. 158-74.

² See Maurice Barbier, *La Laïcité*, L’Harmattan, Paris 1995, pp. 80-89.

In part one, the report claims that ‘secularism cannot be reduced to the neutrality of the state’, but involves four ‘cardinal principles’ (§ 1.2): (1) ‘the independence of the political authorities and of the different spiritual or religious persuasions’ (this signifies an absence of political intervention in religious matters and an absence of religious sway over political authority); (2) a guarantee of freedom of conscience and worship, which represents the ‘positive content’ of secularism; (3) a duty on the part of religions and their congregations to adapt, and conduct themselves in moderate fashion, so as to make coexistence possible, in exchange for the guarantees and protections afforded them by the state; (4) the need to live together and construct a common future – which leads to identifying secularism with the ‘republican pact’ in practice. In themselves, these four principles are correct and acceptable. But only the first truly forms part of secularism, even though it refers exclusively to the political authorities and discreetly evacuates state neutrality. The other three principles point towards a new conception of secularism, which is significantly modified and considerably enlarged. The stress falls especially on freedom of conscience and religion, spiritual diversity, and coexistence. As a result, secularism is now nothing but a means in the service of those ends, which are obviously essential. It even tends to be identified with them and to disappear into them. Henceforth these ends take priority over secularism and the latter can be erased if that is required in order to attain them. The second part of the report is scarcely more satisfactory than the first. It states that the legal principle of secularism contains two elements: state neutrality and the protection of freedom of conscience and worship. The first is obviously part of secularism, but such neutrality is not defined and is assimilated to legal equality, which is highly debateable. Moreover, as has been said, freedom of conscience and worship is not an integral part of secularism, even if there is a link between the two.

Finally, and very curiously, in these two analyses of secularism the idea of a separation between religions and the state is completely forgotten, as if it were no longer of any value. The currently dominant tendency to modify and enlarge secularism, which is apparent in the report of the Stasi Commission, leads to significantly transforming it and even effectively hollowing it out, by neglecting its specificity and confusing it with different principles.

Secularism, a Negative Notion

Faced with the confusion and the uncertainty that now characterize French secularism, we must define this notion more rigorously, discarding abusive extensions and subjective interpretations of it.³ To this end, we must base ourselves on a firm, sure foundation. As the question is posed in the context of France and French law, this can only be the relevant legal texts: the 1958 Constitution (and other texts with a constitutional status)⁴ and the relevant laws (notably those of 1882 and 1886 on the secular character of schools and that of 1905 on the separation of church and state).

In principle, the procedure to be followed seems simple and straightforward. In fact, however, it is strewn with hidden pitfalls and the juridical inventory contains some surprises. First of all, these legal texts never employ the noun *laïcité*, but only the adjective *laïque*. The latter is used three times, but in different senses: (1) in the law of 1886, which stipulates ‘lay staff’ [*personnel laïque*] in state schools, excluding priests and members of religious congregations; (2) in the preamble to the 1946

³ We are dealing here with the French notion of secularism – that is to say, the form assumed by this notion in France and in French law. Other forms of secularism exist: in particular, there is an American, a Mexican, a Turkish, or a Senegalese secularism. But we may ask whether a general notion of secularism exists, independently of its particular forms. In the event of the answer being yes, it remains to be constructed and the approach proposed here can contribute to this.

⁴ The 1789 Declaration of the Rights of Man and the Citizen and the preamble to the 1946 Constitution.

Constitution, which prescribes the organization of ‘free and secular state education’ [*l’enseignement public gratuit et laïque*] at all levels, which implies the exclusion of religious instruction; and (3) in the 1958 Constitution, which, like that of 1946, asserts that France is a ‘secular republic’ [*république laïque*], excluding religion from the state. Thus, not only do the official texts not contain the word *laïcité*, but they use the word *laïque* in different senses, indicated by the context. However, each of the three cases involves excluding religion (or its representatives) from the public sphere (the state or schools). This dimension of exclusion risks being forgotten in an age which insists instead on integration. In fact, secularism has a negative character, whereas it is usually its positive aspect that is emphasized.

In the second place, the secular character of the Republic, asserted by the 1958 Constitution, is nowhere defined and is clarified only by the parliamentary debates that led to its introduction into the 1946 Constitution. These debates reveal at least two different conceptions of secularism. For some, it is defined by the separation of church and state effected by the law of 1905; for others, it consists in the state’s neutrality towards religions, which entails its respect for religious freedom.

Apparently, there is no substantial difference between these two conceptions of secularism, which coexisted without clashing during the debates in 1946. Yet they are not identical and the difference between them will emerge later. The 1958 Constitution seems to privilege the second conception, for its first article asserts that France ‘respects all beliefs’ – a formula added at the last minute which passed unnoticed (doubtless to reassure Catholics). In these conditions, constitutional secularism could be defined as state neutrality in religious matters, which would confirm the negative character of secularism.

But the 1905 law, which does not explicitly refer to secularism, suggests a different conception of it by effecting the separation of church and state. Appearances to the contrary notwithstanding, this expression, which does not figure in the text of the law but only in its title, lacks clarity. In fact, such separation boils down to two precise components, which are negative: the absence of recognition of forms of worship and the absence of their public funding in the form of salaries or subventions. It thus consists solely in putting an end to the regime of recognized forms of worship established by the 1801 Concordat and the organic articles of 1802. But several articles in the 1905 law, notably those concerning religious associations and the fate of religious buildings, indicate that the state unconsciously interferes in the religious sphere and improperly limits freedom of worship. They are therefore in conflict with a complete separation.

In addition, article 1 of this law asserts (or rather reasserts) freedom of conscience and freedom of worship. In fact, it contains nothing new, since freedom of conscience was already recognized by the 1789 Declaration (article 10) and freedom of worship had been consistently accepted since the 1791 Constitution. These two freedoms therefore pre-existed secularism and can exist without it, as is indicated by countries that do not practice secularism but which fully respect religious freedom.

Consequently, they are foreign to the notion of secularism in the strict sense and cannot form part of its definition. The same is true when secularism is defined by tolerance, pluralism, or even democracy, which can be detached from secularism and exist without it, as is the case in Great Britain and the Scandinavian countries. To be rigorous, we must reduce secularism to its negative aspect, for French law leads us to

regard it as a purely negative notion: according to the 1905 law, secularism consists in the absence of recognition and subvention of forms of worship and, according to the Constitution, it involves the exclusion of religion from the public sphere of the state.

Legislative Secularism and Constitutional Secularism

Following this analysis, an initial assessment is possible. According to the legal texts in force – the only ones to be taken into consideration – two different sorts of secularism exist in France: on the one hand, legislative secularism, established by the 1905 law, which can be called secularism-as-separation and which is clearly defined; on the other hand, constitutional secularism, established by the Constitutions of 1946 and 1958, but whose precise character, for want of a positive definition, is indeterminate. The first form of secularism is clear; the second is not. This is all the more regrettable in that the Constitution possesses a superior juridical value to that of laws and hence constitutional secularism takes precedence in principle over legislative secularism.⁵ The issue of the relations between the state and religions is sufficiently important to warrant explicit, precise mention in the Constitution, as is the case in other European countries. Likewise, the meaning and scope of constitutional secularism requires clarification. Curiously, however, the French Constitution remains deficient on this point, which is doubtless indicative of an unspoken political unease and a problem that was not resolved during the 1905 separation.

⁵ By contrast, in the United States there is only one secularism, which is clearly asserted in the Constitution (article 6 and first amendment) and which lays down a separation between state and religion. On the one hand, the state requires no special religious declaration for public office, demonstrating its independence of religion (article 6); on the other, it cannot intervene in religious matters, because Congress cannot legislate to establish a religion or prohibit its free exercise (first amendment). The negative formulation should be noted in both instances, confirming that secularism is indeed a negative notion.

To fill this gap and mask this problem, constitutional secularism has usually been regarded as being no different from legislative secularism – a conclusion that the parliamentary debates of 1946 seem to warrant. In fact, this approach is debateable and even impossible; and the moment has come to recognize this, at the risk of provoking a certain disquiet: constitutional secularism cannot be identical with legislative secularism. This conclusion is prompted by the particular status of forms of worship in Alsace-Moselle. In fact, following their return to France in 1919, these three eastern departments retained the regime of recognized forms of worship with public funding; and the 1905 law of separation does not apply to them. However, this is not contrary to the Constitution (which obviously applies to the three departments in question), or to constitutional secularism. Consequently, the latter is not opposed to the recognition of forms of worship or to their public funding and is therefore necessarily different from legislative secularism.

This assertion, which seems surprising, can be demonstrated legally. In fact, the funds earmarked for financing recognized forms of worship in Alsace-Moselle figure each year in the state budget, which is the object of a finance law. Whether this measure conforms to the Constitution is an issue that has never been raised and there has never been any question of submitting it to the scrutiny of the Conseil constitutionnel. Moreover, the latter has carefully avoided pronouncing on this point, even though it had at least one opportunity to do so in December 1994, when it examined the finance law for 1995. We may deduce that no one regards such funding as contrary to the Constitution. The case of Alsace-Moselle thus obliges us to conclude that the recognition of forms of worship and public funding of them are not contrary to constitutional secularism, confirming that the latter is different from

legislative secularism. Consequently, it would not be contrary to constitutional secularism to grant public funding for constructing mosques or training French imams. But a law would be necessary to do it, without requiring amendment of the 1905 law (this was what was done in 1920 for the Paris mosque).

Of course, this does not define what constitutional secularism consists in, or what distinguishes it from legislative secularism. But it can contribute to it, if we reread the parliamentary debates of 1946, which presented two conceptions of secularism: one – secularism-as-separation – cannot clarify constitutional secularism; only the other – secularism-as-neutrality – can do so. We may deduce that constitutional secularism is defined by state neutrality in religious matters and not by the separation of church and state. This conclusion is sufficiently well-founded legally to be regarded as certain. It can be confirmed by the formula according to which France ‘respects all beliefs’, which is in accordance with state neutrality. It is likewise adopted in the advisory opinion of the Conseil d’État of 27 November 1989, which analyzes the secular character of education and the state in terms of the neutrality of teachers, curricula, and public services. But the notion of state neutrality, which can have two different meanings, must be clarified. In the first instance, it designates the absence or exclusion of religion from the public sphere of the state. We may then speak of neutrality-as-exclusion, which recalls the negative character of secularism. Neutrality also refers to the state’s impartiality as regards religions, which it treats in like manner, without itself possessing a religious character, as in the case of Alsace-

Moselle. We may then speak of neutrality-as-impartiality, which implies equality between religions.⁶

The Conseil constitutionnel has just pronounced on the principle of secularism for the first time and indicated its conception of it. It did so in the recent decision of 19 November 2004 (no. 505 DC), interpreting the first article of the Constitution according to which ‘French is a secular republic’. It states that the clauses of this article ‘prohibit anyone from taking advantage of their religious beliefs to exempt themselves from the common rules governing the relations between public authorities and private individuals’. Certainly, this does not involve a formal, full definition of secularism. But it is the first official interpretation of it given by the highest court of law.

In it we can distinguish four different points: (1) first of all, secularism lays down a prohibition, which translates into a limitation on religious freedom – something that confirms the negative character of the notion, since any limitation is a negation; (2) this prohibition is addressed to private individuals and more precisely concerns their relations with ‘public authorities’ – a very broad phrase that encompasses the state, territorial authorities, public administration, and public services; (3) this prohibition concerns the religious beliefs of individuals, not in order to restrict them, but in order to exclude their intervention in, or impact on, the relations between private individuals and public authorities; (4) finally, this prohibition aims to oblige individuals to respect common rules in these relations that they cannot exempt themselves from them for

⁶ Neutrality-as-impartiality should logically result in Islam being treated like other religions in Alsace-Moselle.

religious reasons – which comes down to asserting the primacy of these rules over personal beliefs.

But this conception of secularism is insufficient and does not correspond to a full definition of it. In fact, secularism does not only concern individuals, restricting their religious freedom. It also concerns the state, public administration, and public services, imposing on them neutrality in religious matters, as we have seen. This notion, which has been explained above, is required for a full definition of secularism. Its combination with the conception formulated by the Conseil constitutionnel would yield a satisfactory definition of secularism.

Since the Constitution is superior to laws, we might be tempted to give precedence to secularism-as-neutrality over secularism-as-separation and even to substitute the former for the latter. Of course, this is perfectly possible, as long as we do not forget that there are two sorts of neutrality. Neutrality-as-exclusion corresponds to secularism-as-separation, defined as the non-recognition and non-subvention of forms of worship. It even refers, more broadly, to the exclusion of religion from the public sphere. As for neutrality-as-impartiality, it too involves excluding religion from the state, for the latter cannot be impartial if it itself has a religious character. But it does not prevent the state from having relations with religions – for example, recognizing and funding them. Consequently, constitutional secularism, defined as neutrality in both senses of the term, obviously encompasses legislative secularism. But it is broader (or more flexible), for it only obliges the state to be impartial in its relations with religions. There is therefore no point seeking to replace legislative secularism by constitutional secularism, since the latter necessarily includes the former. However,

the second is different from the first and goes beyond it, allowing the state to have equal relations with religions. This is why public funding of recognized forms of worship in Alsace-Moselle is not contrary to constitutional secularism.

While the two forms of secularism are distinct and coexist, they have something in common – i.e. the exclusion of religion from the state. This demonstrates the essentially negative character of secularism. It is defined by the negation of religion within the state and its exclusion from the public sphere: it is therefore a negative notion, with no particular content. This is the correct and precise definition of French secularism, as it emerges from current law. It can also serve to assess other forms of secularism and measure their degree of reality.

This is the characteristic that makes it possible clearly to identify the true nature of secularism, which is neither old nor new, neither open nor closed. Certainly, it can be regarded as a fundamental principle, but of a special sort, since it is a negative principle – which does not diminish its importance. That is why when people seek to make it a positive notion or value, or suggest giving it a substantial content, they risk misunderstanding it. Yet as we have seen, such endeavours have become very frequent, even general, and not only among militants of secularism, but also among its theoreticians and political and religious leaders. To fill the basic void of secularism, it is given a positive content and a reassuring, attractive image. It is then assimilated to the most diverse realities, which amounts to discarding it or deviating from it. Thus, what remains of secularism when it is identified with religious freedom, tolerance, or pluralism? It quite simply becomes useless and uninteresting, for all of these can exist without it. In fact, this is an insidious way, now current, of devaluing secularism

and effectively abandoning it. On the contrary, it is important to maintain its negative character, not identifying it with any positive reality. For, while making freedom, diversity and pluralism in religious matters possible, it is nothing substantial in itself.

Secularism and Religious Freedom

If secularism is the exclusion of religion from the public sphere, it contains another aspect that does not form part of its essence, but which necessarily follows from it. In fact, religion is not totally repudiated and can exist outside the state – i.e. in civil society – where it can be freely practiced and organized. Secularism is the negation of religion only in the state; and this allows for its expression outside the state and hence the existence of religious freedom. This is how the latter can be connected with secularism, without forming part of its essence strictly speaking.⁷ This is why the French legal texts touching on secularism simultaneously affirm religious freedom and assign it its own space outside the public sphere. Thus, the law of 1882, which excludes religious instruction from state education, reserves a day a week for it outside educational premises. The law of 1905 begins by affirming freedom of conscience and freedom of worship before effecting the separation of church and state. Finally, by making it clear that the secular republic ‘respects all beliefs’, the 1958 Constitution accords religion a zone of freedom. The 1989 recommendation of the Conseil d’État even claims that, according to the Constitution, ‘the principle of secularism necessarily implies respect for all beliefs’, although such respect is a consequence of secularism, not the same thing as it.

⁷ It is likewise in this fashion that religious tolerance and pluralism can be connected with secularism without being identified with it: they follow naturally from, and are necessary consequences of, it.

Obviously, recognizing religious freedom is as important as excluding religion from the public sphere. It implies that the state does not intervene in the religious sphere and hence that it in turn is excluded from the latter. This assumes a complete separation between state and civil society, between the public sphere and the private domain, which is the domain not only of individuals but of groups and associations (and thus of churches and religious communities). This is why religious freedom is at once individual (freedom of conscience) and collective (freedom of religious communities). It implies that the latter organize themselves and operate freely. A specific form of organization or a special status cannot therefore be imposed on them. Thus, the very existence of religious associations, such as envisaged by the 1905 law, is debateable. It is opposed, in fact, to religious freedom. The Catholic Church refused to set them up, in the belief that they undermined its freedom and its organization. Despite the satisfactory compromise achieved on the subject in 1923-24 between it and the state, the basic problem remains – i.e. state intervention in religious matters. That is why the status of religious associations should be reconsidered or why they should even be replaced by ordinary associations (governed by the law of 1901), charged with providing for the cost and the maintenance of the form of worship and able to be authorized to receive gifts and legacies exempted from transfer tax.

While French legal texts have long affirmed freedom of conscience and freedom of worship, religious freedom merits featuring explicitly in the Constitution, as is the case in other European countries. It is of much greater scope and, for half a century, has been spelt out and enlarged by several international conventions which bind France. We are dealing principally with the 1950 European Convention on Human

Rights (article 9) and the 1966 United Nations international protocol on civil and political rights (article 18), which France ratified in 1974 and 1980 respectively. These conventions do not contain the notion of secularism, but they do devote a precise, detailed article to religious freedom, which resumes article 18 of the 1948 Universal Declaration of Human Rights. They broadly affirm freedom of thought, conscience and religion, implying the freedom to change religion or beliefs and the freedom to express one's religion or beliefs, individually or collectively, in public⁸ or in private, through teaching, practices, worship, and the performance of rites. In 1981 a resolution of the UN General Assembly indicated in still more detail (but without binding force) the content of religious freedom, giving it a very great extension.

Although religious freedom does not strictly form part of secularism, it can never be separated from it. This sometimes leads to talk of secularism-as-freedom. However, this involves an abuse of language which is not risk-free, for it can lead to identifying secularism with religious freedom and reducing the former to the latter, forgetting its true nature and unconsciously emptying it of content. In fact, this assimilation has become rather common both among religious leaders (Catholics, Protestants, Jews, Muslims), political leaders (of the right and left), and even certain specialists on secularism. Religious freedom then takes precedence over secularism and even ends up replacing it, with inevitable practical consequences. Thus, if secularism is reduced to religious freedom (or tolerance), wearing religious signs in state schools is

⁸ This phrase signifies publicly or in a public (as opposed to private or hidden) manner. There is often (especially among sociologists of religion) a confusion over the meaning of the word 'public' or the phrase 'public space', because of a failure to distinguish between the public sphere of the state and the domain of social existence: secularism is opposed to any manifestation of religion in the public sphere of the state, but not to its manifestation (even public) in the framework of society or in the public domain.

obviously possible, as many Muslims consider it to be. And other examples inspired by the same principle might be given.

This was the line of reasoning followed in the 1989 opinion of the Conseil d'État, whose rapporteur was Mme Martine Laroque. According to this text, secularism in education dictates, on the one hand, the neutrality of teachers and curricula and, on the other, 'respect for pupils' freedom of conscience' (which is correct). But it adds that this freedom 'includes their right to express and manifest their religious beliefs within educational institutions' (which is highly debateable). It follows from this that 'in educational institutions the wearing by pupils of symbols by which they aim to express their adherence to a religion is not in itself incompatible with the principle of secularism, in so far as it constitutes the exercise of the freedom to express and manifest religious beliefs'. In fact, this reasoning contains two errors which have not been spotted, even by opponents of this opinion. On the one hand, the secularism of state schools is not restricted, in the case of pupils, to respect for their freedom of conscience: it essentially consists in excluding religion from state schools and it therefore imposes a duty of restraint on pupils in their behaviour, since they find themselves in a place pertaining to the public sphere. On the other hand, pupils' freedom of conscience, which is an internal freedom, in no way gives them 'the right to express and manifest their religious beliefs' in educational institutions, for that involves external acts which improperly introduce religion into the public domain of the school. Consequently, the opinion of the Conseil d'État lacks rigour and legal foundation and the jurisprudence to which it has given rise is highly debateable, even if it has been approved by most political leaders.

In these circumstances, to put an end to this jurisprudence, which survived because of the legislators' shortcomings, it was necessary to legislate to prohibit religious symbols in state educational establishments. This prohibition is simply a consequence and an application of secularism properly understood, whereby religion and its manifestations are excluded from the public sphere. The law on the subject adopted in February-March 2004 by the National Assembly and the Senate (by a very large majority in both instances) resolved the issue satisfactorily and with the requisite prudence: it prohibits 'the wearing of symbols or dress by which pupils manifest a religious affiliation in conspicuous fashion'. Before and after its adoption, this law was the object of many criticisms and reservations, with more or less convincing arguments as to its timeliness, its content, its application, or its consequences. Given their number and complexity, they cannot be examined here. But we may venture an assessment of this law as regards secularism. While it mentions the 'principle of secularism' in its title, it is subsequently completely silent on the subject, which warranted explanation. In particular, it would have been useful if it had explained that this principle excludes religion from the public sphere and hence from state educational establishments and public administration; that it imposes an obligation of neutrality on teachers, civil servants, and officials in public administration and public services; and that it also involves a duty of restraint and abstention on the part of pupils. For all alike, this entails a ban on any manifestation of religion and hence on conspicuous religious symbols. The practical application of these general rules would then have been specified by way of decree or order. This approach would have made possible a genuine law on secularism, clearly indicating the meaning and significance of this constitutional principle, indicating its scope without masking its rigour. Going beyond the context of schools and pupils, it would have prevented the legislation from

being limited to a mere law on religious symbols, principally directed at the Islamic veil. Finally, it would have had an educational value, reminding not only the Muslim population (which is unaware of it and in the process of discovering it) of the character and requirements of secularism, but the whole French population (which has forgotten or distorted it).

Refocusing Secularism

While French secularism is not really under challenge, it currently finds itself under intense discussion. The numerous studies that have been devoted to it over the last fifteen years, and the various conceptions of it that have been proposed, have helped to cloud its image, to sow confusion, and even to mislead people. It is now necessary to refocus secularism on the essentials and to restore it to its specificity. Accordingly, there is a labour of clarification and simplification to be undertaken on this subject, excluding theoretical or philosophical speculations that obviously remain legitimate, but which do not take sufficient account of national realities. This labour is especially necessary today for two reasons, which have a direct impact on secularism: on the one hand, the transformation of the state; on the other, the presence of Islam in France.

If French secularism is in question and undergoing a certain evolution, it is due in the first instance to the changes affecting the state in recent decades. Given that it consists in excluding religion from the public sphere, secularism depends on the way in which that sphere is defined and hence on conceptions of the state. While remaining important, there is a strong tendency for the state sphere to be reduced in favour of civil society, which is set to expand. Consequently, religion, which has its natural place in society, is seeing its domain expand and its role increase, despite

growing secularization. Secularism is necessarily affected and restricted as a result. By transferring various functions to society – e.g. cultural or humanitarian matters – the state offers religions new arenas of possible action. If religions exercise responsibilities in society, the field of application of secularism is reduced. Moreover, the boundary separating state and society tends to be erased and becomes porous and easy to cross in both directions. The state constantly intervenes in the life of society and supports it in many ways. Conversely, society (individuals, groups, associations, enterprises, etc.) does not hesitate to penetrate the state, to obtain state support (including financial support), and to promote its own particular interests.

Naturally, religions cannot remain outside this dual dynamic. On the one hand, the state consults them (e.g. on ethical issues), solicits their collaboration, or provides them with indirect aid (tax reductions for gifts, social security of forms of worship, religious broadcasts on radio and television, etc.). On the other hand, religions seek to have a public (not merely a social) existence, to secure recognition from the state, and to get it to accept their own positions on numerous issues (the family, abortion, homosexuality, euthanasia, bioethics, immigration, social justice, humanitarian action, etc.). The relaxation of the boundary between state and society helps attenuate the separation between state and religions, which readily confuse their social visibility with their entry into the public sphere. It is up to the state to distinguish clearly between the two, accepting the first while refusing the second. A striking example of this development is provided by the repeated insistence of the Catholic Church (particularly the Pope) and certain countries (especially Poland) on having mention of its Christian heritage written into the Constitution of the European Union, taking advantage of the fact that in this political construct the public sphere is not as yet

sufficiently constituted and remains open to particular interests and thus to religions. The role of Christianity in the history of Europe is obviously very important, but reference to it has no place in a political constitution which is, in reality, a constitutional treaty between states. Recent transformations in the state obviously have a marked impact on ways of conceiving and applying secularism. The current debate over the latter must take account of this determinant factor. The fact that the state has been undermined and that the public sphere has become fluid means great uncertainty for secularism; preserving it presupposes a precise and firm definition of the domain of the state.

The second reason for refocusing secularism is the durable presence of Islam and of a large Muslim community. French secularism emerged in a particular historical context, marked by the strong influence of the Catholic Church, which was deemed hostile to the Republic. It was mainly constructed against this Church and retains traces of this struggle in the laws secularizing schools and in the 1905 law of separation. It is for this reason that French secularism is rather different from American secularism, which emerged a century earlier in a different historical context with no particular strife. This also explains why it appears ill-adapted and even powerless when faced with a different religion like Islam. The latter is not really concerned by the law of 1905, which is only aimed at the forms of worship recognized at the time, ending their recognition and funding.

This is why, while drawing inspiration from the principles of the 1905 law, it is advisable to clarify the way of conceiving and applying secularism when faced with Islam. In principle, this does not pose a major problem if secularism is refocused on

the main thing – i.e. the exclusion of religion from the public sphere. However, there is a serious difficulty to be resolved, which is new and disconcerting: this is the fact that Islam is not only a religion, but contains a social and political dimension, and hence an ideology capable of inspiring a practice. Consequently, it is necessary to separate what is religious in it from what is not. This is a delicate operation, for which the state is not competent and which Muslims are loath to carry out. It is therefore necessary to proceed in a pragmatic fashion in order gradually to induce Islam to restrict itself to its religious dimension, with the practical consequences that this entails. This method is very different from the one that wishes to construct a French Islam – an expression that has no precise meaning and which can generate confusion. In this particular instance, the role of secularism is to encourage Islam to be only a religion, which does not have its place in the public sphere (and hence in state schools), but which can be freely practiced in society. As for the political aspirations of Muslims, they can be expressed and organized in the framework of the secular state – which should urge them to acquire and exercise their French citizenship. Thus, secularism aims to limit Islam to its religious aspect, while encouraging Muslims to be full citizens.

In this respect, the recent law on religious symbols in schools is an initial measure which, despite its limitations, must not be underestimated and whose significance should be stressed. In effect, it constitutes a clear message to all the Muslims living in France, by establishing a reasonable restriction on Islam and clearly marking out the domain of the state. Certainly, it has a constraining character, but it is applied appealing to dialogue and persuasion. Beyond its immediate objective, it has a symbolic function and an educational value, for it indicates the path to follow to be

integrated into French society and participate in it. That is why there are no grounds for opposing the prohibition laid down by this law and the action required to achieve this integration, for this law already forms part of the process of integration and helps to encourage it. Consequently, without renouncing firmness, it must be applied with confidence in conjunction with educational measures. The law should also be accompanied without delay by positive measures in favour of the Muslim community, in order to facilitate both its practice of its religion and its social integration. On this subject, the report of the Stasi Commission made several judicious proposals and others could be added.

In the future, if we genuinely wish secularism to retain a meaning and its value, it must be refocused on its own specificity, assuming it still has one. To this end, it is important to counter the tendency to assimilate secularism to what it is not. It is likely that this trend will persist and develop. This could bring France closer to most other European countries – which would put an end to French exceptionalism on this point. Certainly, legislative secularism is a bulwark against possible excesses. But constitutional secularism, which contains potentialities, authorizes a good many developments, bound up with current changes affecting the state. The conception of secularism as a separation of the political and the religious, and the exclusion of religion from the public sphere, will be necessary in the face of Islam for a good while to come, for the latter needs time to effect the requisite mutations. Consequently, it is appropriate to preserve its specificity and not to confuse it with its effects or its consequences. On a subject as sensitive as this, and after the many difficulties encountered by a modest law on religious symbols, it is hardly likely that other

similar measures will be proposed. In the current confusion and uncertainty, however, precision and clarity remain indispensable.

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