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LAICITY AND WOMEN'S RIGHTS. EQUALITY AND DIFFERENCE IN CONTEMPORARY FRANCE

Abstract

It is common practice to defend the idea that by separating, in 1880s-1905, the State from the Churches, in particular from the Roman Catholic Church, the French Republic has opened the way to the feminine emancipation. The return to the history tilts us to propose a more diffentiating interpretation. The influence of the laicity is, in France, by no means unambiguous: according to periods, the Republic adopted varied public policies towards women. This article presents a diachronic modelling, envisaged from the dialectic of the equality and the difference, of these policies. It spots a first period, 1880 till 1960, during which remains a hierarchical formula maintaining women in a status of inferiority ; between 1960 and 1990, the equality spouses with the religious difference; from 1990, under the influence of the controversy around the " Muslim question ", France enter a more universalist model, in which the assertion of women's rights comes along with a relative denial of the religious difference.

Key Words: laicity, secularism, women's rights, equality, difference.

It is common practice to analyse the French regime of secularism as being a regime of legal and political organization conducive to the emancipation of women. As the main figure of the Neo-Republican movement in France, the philosopher Catherine Kintzler has developed this concept quite recently, during a hearing before the Delegation for women's rights of the French Senate.[2] Her thesis focuses on three key-principles.

Firstly, a principle of refusal: she puts political regimes on trial, based on the supremacy of religious law. These systems are an obstacle to the concept of autonomy, by imposing on their subjects rules of behaviour they have not neces-

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2 Catherine Kintzler, « Femmes et laïcité », Hearing at the Sénat, 19 March 2015. See also by the same author, *Penser la laïcité*, Paris, Minerve, 2014.

sarily chosen. For women, the situation is, at its heart, even more restrictive than for men: indeed, the religious standards tend to restrict them to the domestic sphere, to deprive them of the possibility of controlling their own intimate life and especially their reproductive practices, and to submit them, in the name of "complementarity of roles", to masculine power. In the second place, a principle of proposal. In order to reconstitute people in their status of free beings, it is appropriate that the "regime of laicity" be perpetuated into the arrangement that the Third Republic, with its Schools Acts of the 1880s and the 1905 French Churches and State Separation Act, bequeathed to us. Running counter to the "systems of tolerance" specific to Anglo-Saxon countries, this regime, while guaranteeing the freedom of worship, presents us with this characteristic of basing political association on the absolute primacy of individual rights, without ever allowing faith communities the opportunity to govern the life of their members in an authoritarian way. Indeed, for women, the benefit was immense: "Laicity (etc.) allows women to fight for their rights and to have them enforced, [in what] it supposes to be a political regime where the right of individuals always has priority over collective rights". Lastly, a principle of mobilization. For some years, the French State, caught up by the "ideology of tolerance" and its broader conception of religious freedom, has had a tendency to repudiate its abstract conception of equality in order to serve the concept of a recognition of the difference. However, this tropism must be contested: it revives, at the heart of modernity itself, the turning back of community specifically with regard to traditional civilization, and, as we are witnessing today with the Muslim women, consequently leads to endangering the rights of women that Universalist laicity permitted to be imposed.

Actually, this Neo-Republican approach gives rise to three major issues. The first issue relates to the input of religion. Very inspired by the French Enlightenment, she perceives it, implicitly, as the antonym of freedom. The situation might be considered in a different way, without returning to Ancient Ages. The modern tradition has other ways at its disposal. The recent works of someone like Jürgen Habermas, that fit in a Kantian vein, thus insist, on the contrary, on the fact that religion has a large semantic enabling it to complement the civilizing effect of reason: "It is a source of culture, from which the awareness of standards and the solidarity of the citizens can be fostered".[3] The second issue attached to the assessment of Catherine Kintzler relates to her definition of laicity. On this ground, as we have seen, the Neo-Republican philosopher makes a sharp distinction between the French model, as being the only one empowered, according to her, to assert itself as secular, and the other Western systems, still marked, according to her, by the presence of a religious matter which surreptitiously corrupts the logic

3 Jürgen Habermas, « Pluralisme et morale », *Esprit*, juillet 2004, p.7. About Jürgen Habermas and religion, see Philippe Portier, "Religion and Democracy in the Thought of Jürgen Habermas", *Society,* 2011, Volume 48, Number 5, p.426-432.

of equality. However, this vision is without doubt an imaginary one : the Anglo-Saxon regimes do not defend, on cultural and religious grounds, such an extensive conception of collective rights that they might jeopardize the autonomy of the subjects, no more than they legally discriminate against non-religious citizens [4]. The third issue concerns the engendering of freedom. Catherine Kintzler links it to the emergence of laicity. Again, the thesis is not really assured. French laicity does not maintain an univocal relationship with the concept of freedom, whether we conceive it, as contemporary political philosophy says, as the ability to have universal rights at your disposal, or as the ability to have differentiated rights at your disposal.[5]. This is particularly apparent when it comes to the question of the rights of women.

The developments which follow are dedicated to the unveiling of this asynchrony. They adopt a diachronic way, by showing that the French regime of laicity has, since its formation at the end of the nineteenth century, accommodated three successive models of articulation of the relationship between the State Law and the rights of women. A first phase, which takes us from 1880 to the post-Second World War period, allows continuation of the principle of hierarchy: laicity then accepts the inequality of status between men and women. The French law sticks to the model specific to traditional societies, that is, of difference without equality. However, the years 1960 to 1990, mark the triumph of equality: laicity is then appealed to in order to assert the right of women to autonomy. This autonomy has a broad spectrum: at a time when the theories of recognition are asserted, under its concept, it joins equality and difference. The third model, which emerged in the 1990s and strengthened during the 2000s, signals a universalist redirection. In public speeches as well as in legal standards, French society then comes to restrict the public expression of religious identities, notably by adopting a strategy of neutralization of the bodies of women. The secular Republic now backs on the pattern of equality without the difference.

The survival of the principle of hierarchy

From Léon Gambetta to Jules Ferry, the Republicans who accede to power in the 1870s, operate in the name of a project of rupture, in accordance with the promises made in 1879; they do intend to put an end to the regimes of alliance between the political and the religious spheres, to send human life back to its sole principles of organization. This aim might have led the emerging Republic to defend, against the patterns issuing from traditional civilization, the concept of political equality between men and women. That did not happen. The policy of autonomy as implemented by its leaders, concerned men. It left out women,

4 Refer, on this particular subject, to Jean-Paul Willaime, *Europe et religions. Les enjeux du XXIe siècle,* Paris, Fayard, 2004.

5 About this distinction, Alain Renaut et Sylvie Mesure, *Alter ego. Les paradoxes de l'identité démocratique,* Paris, Aubier, 1999.

at least in part[6]. To quote Carole Pateman, the entry into the new "social contact" was accompanied by the upholding of the former"sexual contact"[7]

The new social contract which claims to be "secular" rests on two foundations[8]. An axiological base, in the first place. The Republicans considered that, backed by the Napoleonic Concordat signed in 1801, the nineteenth century was, they thought, the time of a weighty return to clerical dominations: then, under the rule of authoritarian governments, the ecclesial authority was reinstalled at the heart of the management mechanisms of the collective being, notably in the field of education. This reinstatement has been all the more unfortunate that the Catholic religion, hegemonic in France, froze throughout the century, as evidenced by the Syllabus of 1864, into a religion of intransigence refusing any compromise with the "new civilization". This situation demanded a shake up. "The French Revolution must be finished", according to Gambetta's words. In the mind of the Republicans, this undertaking must take the form of a "secularization of the political order" conducted at two levels: it means, at the collective level, to set once again, against what the Republicans consider to be (wrongly) the reborn empire of the law of God, the source of legitimacy of the government decision in the only will of the people; at the individual level, to allow everyone to assert his/her own orientations regarding belief or non-belief. This assertion of sovereignty is part of a broader framework: indeed, it is in all the areas, and not just in the area of the religious matter, that autonomy must be asserted. The extension of social rights from the 1890s also responds to this objective[9].

How to give a concrete form to this emancipation? This has to do with the institutional component of the republican project, which is expressed in the concept of separation. Firstly, separation, as early as the 1880s, of Churches and school. The Third Republic enters into a real revolution: it imposes on the public schools (free henceforth), a "moral and civic" education, instead of the former "moral and religious" education, secularizes the teaching corps and forbids clerics, formerly so present at their heart, access to educational institutions. Democracy implies the education of a rational people, dragged out dogmatic statements. Indeed, this does not mean that belief should be eliminated; however, the government intends to have it subordinated to the universalist ethos of the Republic. Separation, then, of Churches and State. For various reasons, this only arrives with the vote of the law of December 9th 1905. This law aimed at finalizing the work of immanentization of political power by withdrawing from the Churches, and notably from the Catholic Church, the status of public law institutions which were

6 Florence Rochefort, « Ambivalences laïques et critiques féministes », *Id.* (dir), *Le pouvoir du genre, Laïcités et religions, 1905-2005*, Presses Universitaires du Mirail, 2007.

7 Carole Pateman, *The sexual contract*, Cambridge, Polity Press,‚ 1988.

8 Philippe Portier, *L'Etat et la religion en France depuis 1789, Pour une sociologie historique de la laïcité,* Rennes, PUR, 2016 (forthcoming).

9 François Ewald, *L'Etat Providence*, Paris, Grasset, 1986.

"recognized, subsidized and paid" by the State, derived from the concordatory legislation. This law, whose article 1 is constituted by a declaration in favour of the "freedom of conscience", extends the gains of the previous years in the field of freedom of opinion (Press Law of 1881), freedom of divorce (Naquet Act of 1884), freedom of association (Association Law of 1901).

This original laicity relies on a key-distinction between two spheres[10]. The state society must be neutral at the level of religion: the State, both in the substance of its legal texts and in the behaviour of its administrative staff, must not take sides with any particular narrative, either religious or atheistic. It must, by its very abstention, prove that it grants the request for equality of its citizens. However, civil society must be open to all religious expressions. Freedom of worship, as we have seen, is guaranteed, as well as the right to publicly assert one's convictions, although the legislation regarding congregations that was adopted between 1901 and 1904 remains largely restrictive. Some of the Republicans do not share this orientation, it is true, as they consider that neutrality should be imposed even in the social sphere. This school of thought, which is not only anticlerical but also irreligious, is followed by those, then a minority, who urge that wearing religious clothing in the public sphere be prohibited.

This new social contract increases overall the freedoms of the subject. From now on, everyone may be a believer or a non-believer: religions are emancipated from juridictionnalist constraints issuing from the concordatory order; as for non-believers, they are no longer subjected to an unequal regime: in its neutrality, the State acknowledges, more than ever, their equal social dignity. Similarly, civil, political, educational, social rights are consolidated. Considering that the new regime intended to break with the Gothic laws that emanated from the religious civilization, it would have been expected that this extension of the scope of rights be valid for women as well as for men. This is not the case. While referring to the progress of equality, the Republicans maintain overall, in the law itself, the pre-existing hierarchisation, canonically determined, of sexual roles.

This is particularly noticeable in the field of civil rights. The Third Republic does not call into question the authority of the husband within the couple, as enshrined by the Code Napoleon in 1804. Though in 1884, the Naquet Act revisits the proscription of divorce, divorce by mutual consent is denied (it is even denied by someone like Durkheim) and insists on recognizing that adultery by the husband is a less serious element of fault than adultery by the wife. As to the question of political rights, of course some Republicans, such as Ferdinand Buisson[11], defend the "generous madness" of giving women the right to vote (in municipal elections, Buisson attenuates). However, this madness does not take root. The laicists, notably the Radicals, make common cause to oppose a real universalization of suffrage, whereas many non-secular countries (according to the definition of

10 Dominique Schnapper, *La Communauté des citoyens, sur l'idée moderne de nation*, Paris, Gallimard, 1994.

11 In a parliamentary report of 1909.

Catherine Kintzler) such as the United Kingdom, the United States or the Scandinavian countries make of it a founding principle of their political regime. The legislation concerning procreation is not more open-minded. Some progressives in the sphere of anarchist groups, or a feminist such as Nelly Roussel, promote the concept of free maternity without coercion or suffering, and therefore campaign for contraceptive practices.[12]. There is nothing like that with the Republicans of government: in addition to weakening the demography of the nation, Neo-Malthusianism thrust women into the immoral research of carnal pleasure. After the First World War, the criminal law concerning abortion would be even tougher, on the basis of an alliance between the laicists and the Catholics.

Does this mean that the frame of reference of equality would have no effect on the status of women? That would be going too far. In the area of labour, an Act of 1907 allows married women to freely receive their salary. In 1919, female primary school teachers get the same level of salary as male teachers. These are real conquests. However, they are sullied by the fact that, despite the grant of "civil capacity" to women in 1937, married women may not work without the authorization of their husband. In the thirties, the government has been taken measures to substitute jobless men for women in the Public Service. In the field of education, things are changing too. Following a dynamic already initiated by François Guizot under the July monarchy (1830-1848), and above all by Victor Duruy under the Second Empire (during the 1860s), the right to education is becoming increasingly feminised. This is the result of the Sée Act passed in 1880 (secondary education) and the Ferry Act in 1882 (primary education). The government also considers the training of female primary school teachers by imposing on departments the financing of training colleges for girls (Paul-Bert Act of August 9 1879), whose teachers will have notably trained at and graduated from the Superior Training College for Girls (Ecole Normale Supérieure), created in 1880. But once again, equality is far from being flawless, as shown by the fact that, for girls, studies at secondary school simply lead to a high school diploma and not to the baccalaureate[13]. Besides, this differentiation of roles is the subject of a theorization. By reading the texts of the pedagogues of the time, those of Paul Janet for instance, we are easily convinced that the status of the educated woman is not the same as that of the educated man: with variants, however, as shown, in the matter, by the progressivism of someone like Paul Bert or Jean Jaurès or by the criticism of the "archaisms of the public school" as developed by the Associations of male and female primary school teachers or the Teaching League (Ligue de l'enseignement). The Republic aims at creating a paragon of virtue, by allocating her to the service of her home, her children and her husband, the reason why the programs of primary schools reserved for her for a long time the learning of "needle works".

12 For an analysis of feminism under the Third Republic, Florence Rochefort et Laurence Klejman, *L'égalité en marche. Le féminisme sous la Troisième République*, Paris, PFNSP/Des femmes, 1989.

13 The uniformity of secondary education of girls and boys (schedules, contents, diplomas) will take place in 1924.

The recognition of the principle of equality

So, during the first phase of its history, the secular Republic leaves women out of its project of emancipation: it persists in delegating to Catholicism, in a kind of "catholic laicity", according to the expression of Jean-Paul Willaime, the narrative that refers to the allocation of qualities and functions of gender. It is not until the post-Second World War years, and even more, the 1960s, that French society opens up new possibilities, by using the very concept of laicity: it grants then, as a trend, the same rights as those granted to men. This proclamation of equality is then formulated in a language which is no longer exclusively that of the universalism of the Third Republic: it admits the publicization of the difference, provided it is freely chosen. And this particularly applies to the religious field.

Let us observe the mutations of the years 1960-1990. They affect four areas. First, the area of civil rights: in 1965, by extending the legal capacity, the legislator authorizes women to work without the agreement of their husband, to manage freely their personal property, to participate in the management of the common property of the couple and to open a bank account in their name, even against the will of their husband; in 1970, the legislator deletes the concept of head of the family. The joint parental authority then supersedes the omnipotence of the father of the family and consecrates the equality of the spouses in meeting parental responsibilities. In 1975, adultery is decriminalized and divorce by mutual consent is introduced. Second, the area of political rights. In 1944, women get the right to vote, which is also defended by the Church. During the 1990s, this right will be complemented by measures regarding parity in terms of access to elective office. Third, the field of sexual and reproductive rights. Numerous measures are then taken to allow women to control their procreation: contraception is legalized in 1966, abortion is decriminalized in 1975, medically-assisted procreation is authorized in 1994. Eventually, the area of religious rights. On the whole, the laws of the years 1880-1905 remain as they were. They are just no longer interpreted in exactly the same way. Laicity then becomes more welcoming to the publicization of diversity. The most significant point without doubt concerns schools. The law still imposes on teachers a strict external neutrality: nothing pertaining to their religious affiliation must be visible, either in their lessons, or in their clothing. This does not also apply to the students. Contrary to the adult users of the public service, they were so far obliged, as consciences in the course of development, to a certain discretion within the school. This rule is modified at the end of the 1980s: the Education Act of 1989 grants them the freedom to express their opinions. Besides, it is on these grounds that, the government takes up with the Council of State the question of wearing the Islamic veil at school. By issuing an opinion in November 1989, the Council of State admits that wearing religious signs in public educational institutions is not contrary to laicity. At this stage, two questions arise.

The first one takes us back to the past: why secularization, at the turn of the Nineteenth and Twentieth centuries, did not come with such recognition of the rights of women? It does seem that two elements were taken into account. Strategic reasons, without doubt. The access of women to the right to vote is blocked by the parliamentarians, in particular by the senators, of the Radical party during the Third Republic on the ground that women, still subjected to the clergy, cannot issue a free vote. Paradoxically, despite their attachment to the traditional family, some Catholics - as is the case of people like Paul Dussossoy or Marc Sangnier, siding with the Republic, it is true - are more inclined to accept developments in this field, sometimes by pleading the principle of equal dignity of individuals, also by taking advantage of the argument of the necessary "moralization" of the French political life. To the strategy of distrust is joined that of compromise. The Republicans do not intend to rush things: although they maintain, in respect of the distribution of roles of gender, the principles of yesterday, this may also be in order to consolidate the support of the Catholics to the new regime. In the 1860s, as a member of the association for women's rights, founded by Léon Richer and Maria Deraismes, Jules Ferry thus wrote to his wife in the 1880s that he could not ignore that he was "the elected representative of a people who love their processions and repositories".[14].

However, the Republican reluctance also has cultural reasons. In France, the process of secularization is achieved within the frame of a social ethic that remains Catholic at its heart. Along with the people they lead, the Republican elites therefore share massively the imaginary of gender coming from religious centuries. They are tocquevillians in substance: though the political corps is open to the logic of democracy, the same is not true for the family corps. Artifice can rework the layout of the former, it cannot undermine the naturalness of the latter. Irène Théry clearly demonstrated, from this point of view, that with the principle of this kind of narrative, can be found symbolic distributions specific to the Catholic universe, themselves emanating from the Aristotelian world. Until the 1920s[15], the Republican narrative distinguishes as does that of the Church, psychologies and attributions. At the level of psychologies, it asserts that men are on the side of the pole of rationality and women on the side of the pole of sensibility. This results in differentiated social roles: to the former, the public sphere, to the latter, the private sphere, albeit under the control of the husband[16].

Now, the second question confronts us with the present time: why does the Republican universe open up, from the 1950s-1960s towards this egalitarian

14 Although Jules Ferry is in favour of the emancipation of women, Françoise Mayeur, « La femme dans la société selon Jules Ferry », in François Furet (dir.), *Jules Ferry, fondateur de la République*, Paris, EHESS, 1985, p. 79 *sq*.

15 The involvement of women in economic sphere during the First World War seems to have changed partly the social ethic.

16 Irène Théry, « Du mariage civil au mariage pour tous. Sécularisation du droit et mobilisations catholiques », *in* Sociologie, *vol.1, 2015*.

evolution? Here again, two factors have intervened. On the one hand, we have a lexical turn. Laicity then experiences a semantic reorganization. Until then, it supported a reflection of the institutional kind: this concept was used within the frame of a questioning of the procedures for separating the Churches and the State, by focusing more and more, besides, since the 1950s, on the issue of the status of the Catholic private schools. From the end of the 1960s, it is given a much more axiological content, as seen during the parliamentary debate on contraception and abortion. While demands of sexual democracy are being asserted, laicity is called on to accompany the liberation of morals: the public narrative, especially that of the left, makes of it the instrument of a dissociation of individual existences with regard to the religious values retained in the legislative corpus. Backed by the strengthening of the ideal of autonomy, this inflection affects the relations of gender: it leads the Church to support the concept of the equality of sexes, and no longer only, as it had done since the 1880s, the equality of beliefs only.

However, this lexical turn would not have been possible without a cultural turn. In France, opinion experienced a vast movement of secularization: since the eighteenth century, it had gradually detached itself from the normativity of Christian categories. But definitely not in a uniform way. As a first step, in the nineteenth century and at the beginning of the twentieth century, it supports the concept that culminates in the separations of the 1880s-1905s, of decatholicisation of the political sphere. While repudiating the concept of the unity of faith and therefore validating the principle of the freedom of conscience and opinion, however, it still remains attached to the concept of a private ethic supported by the Church. It was not until the 1960s that a threshold was crossed in this matter. We then enter what the sociologist Henri Mendras named the "second French revolution". Under the influence of a range of social, economical, philosophical, technical factors, a phenomenon of decatholicisation of culture then occurs: it is analysed as a process of separation in respect of the dense web of social evidences inherited from Christianity which, up to the Fifth Republic, swamped the ways of thinking and acting of French society[17]. Relationships between the sexes are particularly affected: in the past, they were classified in the intangible order of natural realities, they are now regarded as political realities, according to the slogan *"privacy is political",* liable to be handed over to the possibility of artifice.

This egalitarian logic does not call into question the freedom of believers. On the contrary, it strengthens it. The theme of autonomy, opening, according to a logic of desire more than reason, of identity more than rationality, on the acceptance of all the singularities, leads the State at this time, to welcome, also, the exposure of religious particularisms, not only in the social sphere but also in the sphere of the State, as we saw with the question of wearing the Islamic veil

17 Danièle Hervieu-Léger, *Catholicisme : la fin d'un monde*, Paris, Bayard, 2003.

at school. Such opening is not without a link with the attitude of a Catholicism which accepts, after Vatican II, the rules specific to the liberal order and allows, moreover, without calling into question its theory of gender complementarity, the accession of women to civil and political capacity[18].

Contesting the principle of difference

So during the 1960s-1980s, laicity thus goes along with a general trend of reduction of constraints, identifying itself willingly with a regime of recognition of autonomies, including the area of the management of intimacy. This extensive vision of independence does not prevent this period of time from accepting the freedom of choice of women attached to religious standards. Equality and difference are then articulated. However, during the last few decades, this pattern is called into question: the social link is established much more on the basis of isonomic polarity than on that of singularist polarity. This mutation did not take place without making an impact on the issue of the distribution of the roles of sexes: the principle of laicity enabled them, till quite recently, to let their choices with regard to clothing run wild; as shown by the laws of 2004 regarding the wearing by pupils of religious symbols in public schools, and 2010 regarding the concealment of the face in public areas, which affects the wearing of the burqa, women are from now on subjected to unprecedented constraints (to which some authors, it is true, assigned an emancipatory valency).

Where does the weakening of the egalitarian-differentialist model come from? It proceeds from a transformation of contexts, marked by a renewal encountered by the denominational landscape and intellectual landscape. The denominational landscape? During the 1980s-1999s, we entered into a "post-secular world". Originating from the reflection of Jürgen Habermas, the concept aims at pointing out the ambivalence of our present time. Religious loyalties continue to weaken. This point is revealed in particular by the fact that the number of "people of no religion" is increasing, to the point of representing, in France, more than 40% of the overall population. However, at the same time, contrary to what the conventional theory of secularization forecast, religion makes a return in some other sectors of the population, under a powerful form of identity. This can be seen by inspecting the evolutions of Judaism, Christianity too (as shown by the mobilization against "marriage for all"[19]), and those, more visible without doubt, of Islam. In the latter sphere, the movement did not leave out women, most often young women, apart: the headscarf appears in the 1980s, the full length veil, in the 2000s. Why this choice of clothing? To justify this, the women concerned often focus on two facts: they actually remind us that, according to a

18 Philippe Portier, *L'Etat et la religion en France depuis 1789, Pour une sociologie historique de la laïcité, op. cit.*

19 Céline Béraud et Philippe Portier, *Métamorphoses catholiques, Acteurs, enjeux, et mobilisations depuis le mariage pour tous,* Paris, Editions de la Maison des Sciences de l'Homme, 2015.

traditional basis, wearing the veil responds to a religious prescription that allows them to escape sexual immorality; they also stand in a more modern sphere, as a fruit of a voluntary decision, the veil is, according to them, one of the conditions for a personal development[20].

However, in response to this new religious context a new intellectual landscape has taken over. It then enriched itself with two trends, issuing from different philosophical origins. One pertains to neo-rationalism. It took shape at the time of the first case of the veil at Creil, around authors such as Elizabeth Badinter. Its principle is clear: one must fight against behaviours that go against universal reason. This postulate is the principle of the condemnation of wearing the Islamic veil, which both leads the social corps to split into separate communities and demonstrates the submission of women to male domination. Associations such as *"Osez le féminisme"* support this postulate too. The other trend, for its part, pertains to neo-traditionalism. Its institutional support can be found in the parties of the extreme right, and more specifically in the Front National. Jean-Marie Le Pen's party held out for a long time against a secular theme because it defended the concept of a Christian France. It discovers it in the 2000s, as it engages in the modernization of its repositories. The fact remains that its concept of laicity is quite remote from that of the Republic of origins: the Front National made an instrument of struggle of it in order to defend, to the detriment of religious freedom and against the presence of Islam, the features of a national, white and Christian tradition that it presents as eternal. These two trends sometimes meet, brought together by a common condemnation of "communitarism" and by the project of removing from Muslim women the veil that they wear.[21]. In both cases, the difference is doomed to be erased, in the name of a principle of autonomy enshrined here in the base of human reason, there in that of national culture. We could easily show that French public opinion has echoed, since the turn of the 2000s, these restrictive narratives.

Confronted by this loss of credibility of the singularist model, the government parties did not indeed take over the entirety of the assimilationist proposal. However, they took it into account, as shown by the examination of the legal texts that was carried out between 1990 and 2015. There was, on the one hand, a reconfiguration of the sphere of freedom. This remark does not apply to secular claims. The legislator persevered in its policy of expansion of sexual and reproductive autonomies, often by pleading the necessity of further asserting the rights of women: this is visible within the files of medically assisted procreation, abortion, or gay marriage. This is a consequence of the deepening of the exculturation of French society. However, this does not also apply to denominational

20 About these points, David Koussens et Olivier Roy (dir.), *Quand la burqa passe à l'ouest, Enjeux éthiques, politiques et juridiques*, Rennes, PUR, 2013.

21 We remember the words of Elizabeth Badinter who believes that "Marine Le Pen is the only political personality to defend laicity".

claims. Regarding religious symbols, as we have seen, two unprecedented religious bans appeared within a few years, one in 2004 with their wearing in public schools, the other in 2010 with the concealment of the face in the public space. This legislation was justified by reasons of public order: it was meant, the parliamentarians explained, to preserve the tranquillity of schools and the security of society. Yet, the protective role of the law with regard to the women concerned has been invoked: it was said to be for their protection both from the pressure of their relatives (their parents, their "big brothers", the big shots of their neighbourhood) and from practices which, in themselves, call into question, even if they adopt them voluntarily, their right to autonomy.[22]. This mutation of the law raises a problem in relation to the ordinary standards of liberal democracy. At the legal level, it makes the ban a principle, whereas it should be an exception, and validates the concept of a control a priori of behaviours whereas the sanction a posteriori should be imposed. At the philosophical level, it establishes the State as an authority defining the content of freedom, to which is attributed a substantial meaning, and not, as should be the case in a regime of neutrality, a merely procedural meaning. Some analysts may have made of this an argument for denouncing the paternalistic orientation of the French political regime, saying that its morals would tend, against the very desire of its subjects, to domesticate, once again, the bodies of women.

On the other hand, there has been a reconfiguration of the concept of laicity. With regard to the debate on the question of the relationship between religions and standards of gender, French laicity has been reworked at two levels. Firstly, at the level of the actors. In original laicity, religious abstention only applied to the agents of the public service. It did not affect its users, who were, as to them, left to their full religious freedom. The legislation of 2010 - that of 2004 as well, some scholars, like Jean Baubérot[23], say - shows an extension of the imperative of neutrality: ordinary women are also under penalty of sanctions, requested to silence the affiliation they might want to reveal. Secondly, at the level of the spheres. As mentioned above, the Third Republic had drawn a cardinal distinction between the state sphere and the intimate sphere. Between them, the social sphere appeared, except for restrictions linked to the requirements of public order, as a sort of extension of the private sphere: there, it was possible to assert one's own affiliations. One illustration will suffice: in 1904, an amendment due to Charles Chabert wished to proscribe the wearing of the ecclesiastical garment in the streets. It was clearly rejected by the Republican majority. Now, the law of 2010 on the concealment of the face has changed this spatial arrangement:

22 In its decision of October 7, 2010, the Constitutional Council declared that the "legislator considered that women who conceal their face, voluntarily or not, are placed in a situation of exclusion and inferiority manifestly incompatible with the constitutional principles of freedom and equality".

23 Jean Baubérot, « Les mutations actuelles de la laïcité en France au miroir de la Commission Stasi », *Bulletin d'Histoire Politique* (Montréal), Printemps 2005, 13/3, p. 69-78.

by introducing the concept of the "public sphere", a merely sociological concept until then, in the glossary of law, it has extended the obligation of abstention, for, of course, the burqa, to the streets, shops, theatres, as if it wanted to make the social space from now into a state space. We also should give attention to the concept of public order. It is a central concept of French public law: it is from this concept that the expansion of freedom and notably the freedom of religion can be limited. Initially, it supports a material acceptance, by referring to the objective elements that are security, tranquillity and salubrity. However, the legislator, supported by the constitutional Council, invests it surreptitiously with another valency, an immaterial one, by connecting it more and more to a substantial model of behaviour, linked, according to the words of the constitutional Council, to its decision of October 7, 2010, with "minimal requirements of life in society". It is not a coincidence that, in 2003, a parliamentary report issued by François Baroin, significantly titled: *For a new laicity,* contained this sentence which went against the French model of the origins. "To a certain extent, laicity and human rights may not be compatible".

This contribution was opened up by a reference to universalistic philosophy. It is perhaps not without use to call in, as a conclusion, the arguments of the supporters of the "inclusive laicity". To this circle of reflection, it is appropriate to aggregate those liberal philosophers such as Alain Renaut[24] or feminists such as Christine Delphy[25]. In their view, contrary to what Catherine Kintzler describes, there is no "communitarist inclination" in French society. Quite the contrary, as shown by the laws on the veil, it is threatened by homogenization. This is not a matter for rejoicing. That inclination raises, they argue, a double problem. One concerns the concept of freedom. The new legal deal alters its meaning. Instead of defining it as freedom to choose, it actually subjects it, in the name of a rigidified understanding of autonomy, to an axiom of moral perfection which implicitly reconnects with the old ideal of *bona vita*. The other concerns the function of politics. Democracy demands that the State be at the service of the plurality of convictions and behaviours. That is no longer its orientation: it is engaged in its rectification, by presupposing that veiled women are necessarily, in their very thoughts, fundamentally alienated. Which is thus expressed by N'Della Paye, from the collective Mothers all equal, as an inversion of the famous slogan of the 1970s: "My body belongs to you". This criticism calls for a project: not that of sanctifying the collective rights, but that of granting to individual rights, even when they go against the laicist conception of subjectivity, their entire possibility of expansion. We could not, after all, in a liberal society, impose on citizens who believe a heavier burden than on those who do not.

24 Alain Renaut, *Un débat sur la laïcité* (en coll. avec Alain Touraine), 2005, Stock

25 Christine Delphy, *Le foulard islamique en questions*, Paris, Éditions Amsterdam, 2004.

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Филип Портие

ЛАИЦИТЕТ И ПРАВА ЖЕНА. ЈЕДНАКОСТ И РАЗЛИКЕ У САВРЕМЕНОЈ ФРАНЦУСКОЈ

Сажетак

Уобичајена је пракса да се брани идеја да је одвајање Цркве од државе, конкретније Римокатоличке цркве од Француске Републике у периоду 1880-1905, отворило врата феминистичке еманципације. Повратак историји нам показује да би требало предложити другачију интерпретацију. Утицај лаицитета у Француској је по све судећи недвосмислен: у складу са периодима, Република је усвојила различите јавне политике према женама. Овај чланак представља дијахрон модел, који је настао на основу дијалектике једнакости и разлика ових политика. Он уочава први период, 1880-1960., за време којег је остала хијерархијска формула која је одржавала жену у инфериорном статусу; период 1960-1990. у току којег се једнакост изједначила са верским разликама; и период од 1990. који је под утицајем контроверзе око „муслиманског питања" и у оквиру којег је Француска усвојила универзалистички модел, модел у којем женска права иду заједно са релативним одбијањем верских разлика.

Кључне речи: лаицитет, секуларизам, женска права, једнакост, разлика

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