Secularity and the republic

A secular recasting of the state : principles and foundations

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The secular recasting of the state, initiated in France with the acts of 1881 and 1886, then the Act of separation of Church and State of 9 December, 1905, corresponds to some sort of evidence enclosed in the very etymology of the word: the *Res Publica* addresses everybody, believers, atheists and agnostics alike and cannot therefore favor anybody. What pertains to some cannot be imposed to all or even privileged : the unity of a population is then based on the fundamental correlation between freedom of conscience and the equality of the rights of all men, whatever their spiritual choices. The French word for secularity, *laïcité*, is derived from the Greek word laos meaning population and therefore refers to a principle of union of the population grounded on values, or requirements, ensuring that nobody will be the victim of pressures on his conscience, or of discriminations because of their spiritual choices.

In that sense, secularity is akin to **universalism**, which is the essence of the republic. But it could not occur spontaneously. There had to be a movement to emancipate the current law from any submission to some specific religious persuasion. Hence, the republic is neither atheistic nor religious: it no longer arbitrates between beliefs but arbitrates between actions and is devoted only to the general interest. Marianne, the feminine allegory of such a republic succeeds Caesar, the emblematic name for the traditional power of domination which has long occupied the functions of the state and signed a contract of mutual service with religions. This evolution puts an end to the confusion between the temporal and the spiritual, and in a way liberates them from the corruptions it inflicted to both.

At the same time, the ethical liberty of the private sphere is guaranteed. No conception of what the good life is can monopolize law or illegitimately extend the normative function of the law beyond the interest of the community of citizens. The law tends to evolve from prescription to proscription. Indeed, men’s ethical and spiritual autonomy implies that current law stops shaping their way of life and merely prohibits what might go against the coexistence of personal freedoms. The conditions to make this autonomy effective must also be ensured. It appears that the secular emancipation of the law goes together with a strict demarcation of the scope of the law. The respect of the private sphere, as independent from the public sphere, maintains the state in the limits required to preserve the autonomy of each person from supervision, whether of one’s life ethics or religious choices. The effect is to protect man’s inner life from any intrusion of the state, which emancipates religious as well as atheist spirituality. Kant argued that the paternalist figure of the prince trying to dictate to his subjects how to be happy was the worst type of covert despotism: making men childish in this way proves in fact that they are considered as neither free and autonomous, nor lucid. (cf. *theory and practice*). And who is to decide of it but a self-proclaimed authority which stands purposely apart from the people it dominates? The republic is not made up of subjects - in the sense that they are not subjected to anyone or anything - but of citizens who, as Rousseau pointed out, are both the authors of the laws and those who must obey them. The two meanings, both active and passive, of the word subject become reciprocal in a democratic sovereignty, which is the collective form of political autonomy: it is in this case the people themselves that promulgate their own law and must

obey it. Such an autonomy, with all its variety of forms for the individual as well as for society, raises the individual to the status of a subject of rights while setting the people up as the sovereign authority.

The type of union formed on that model cannot be interpreted in terms of communities, for it would mean that the people has a right over its members just as the king had a right over his subjects, that is to say, according to a unilateral domination instead of a reciprocal sovereignty belonging to each and to all.

Autonomy itself requires culture, an activity of the enlightened judgment, which first develops in the presence of the works of a creative and thinking humanity. Mastering knowledge and skills then opens up on the reasoned understanding of underlying principles and possible purposes: one can grasp their universal meaning in such a way that no ideological or religious misappropriation is possible. This secularization of the relation to culture, which is the condition for an enlightened citizenship, involves school and education. To achieve the universality of knowledge and rational judgment, its active transmission must be preserved from the diversity of economic situations as well as from the conditioning of religious persuasions organized as lobbies. In other words, civil society, the sphere of the needs and activities of men, but also of the struggle of power or influence which structures them, is also the sphere of the limits resulting from its design. The role of the republican state, its duty, is henceforth to promote what would not spontaneously occur in civil society, precisely because of its limits. The concept of public school, a vector for education for all, meets this requirement. Condorcet insists on that point in *Les Mémoires sur l'instruction publiques*, (*memoirs on public education*), and Jules Ferry acted up to it by promoting the secularization of the French school system, which, he felt, was the warrant of its universalistic vocation.

Obviously, if the ideal of a secular emancipation is not to ring false, nor to become illegible because of the gap between proclaimed right and the social conditions of its enforcement, it must be followed with a concern for social justice. According to Jean Jaurès, the initiator of the 1905 act of separation, the republic must be at once *secular* and *social*. The fields of intervention of the State are therefore to be defined with regard to the legitimate ends it is aiming at, and secular liberalism goes together with a resolute political will which becomes effective when the common good is at stake. Any withdrawal of the State, that is of the republic of the domains where its intervention is justified, amounts to letting the way free to power struggles in the civil society. The empire of the media which tends to shape public opinion is one of the features of these power struggles, as is also the empire of economic and social powers. If Marianne, the French republic, abstains from arbitrating between beliefs which are free and individual, she assertively promotes reflective knowledge and a taste for truth which it is her duty to universalize, as well as social justice. Those two instruments of emancipation are indeed decisive if secularity is not to be but a mere injunction taking no heed of the conditions making liberty effective.

The denominational neutrality of the republic cannot therefore be assimilated to a vague ethico-political relativism. On the contrary, it goes together with values which are by essence universal. Freed from any particular belief, they are not for all that hostile to either a religious or atheist humanism. They are simply free from all partisan persuasions. The republican triptych encompasses all these values, which are acknowledged in an original way by the Declaration of the Rights of Man and the secular ideal takes it at its word: liberty, and in particular the liberty of conscience resting on the autonomy of judgment; equality, and in particular of atheists and different believers or agnostics; fraternity, the source and horizon of a common world open to all, which makes it credible for law to be concerned only with the general interest, to the exclusion of any privilege or discrimination.

It is clear from that point of view that secularity cannot be opposed to any of the spiritual choices

men have made : it is neither hostile to religion nor to atheism or agnosticism. Defined on another ground than that of those spiritual choices, secularity finds its expression in the non-religious nature of the public sphere. Preserving the latter from the hold of the different denominations and the mosaic of communities, is ensuring a civic space of encounter and dialogue really open to all and at the same time it is making legible common references concerned with the general interest. This situation is world away from communitarism which breeds tensions and conflicts between the supporters of different norms which conflicts often arise at the frontiers of specific communities. Remaining outside the differences which divide or oppose men, secularity can allow their expressions on a self-reflective mode, which is a source of peace. It is, because of its universalistic vocation, a principle of peace and concord. It does not require the elision of "differences", but a certain mode of assertion that allows them to exist without ever alienating the public sphere since their latent potentiality of conflicts readily springs up when they take an aggressive and dominating turn.

Understood in this way, **secularity covers simultaneously three things**. First, a **founding ideal**, which links a certain idea of man and of his freedom of action with a certain idea of the political community, turned towards equality of rights and the conditions making it effective. Secondly, **a legal system of institutional separation** and strict independence from the State and the Churches which guarantees freedom of conscience as well as equality. Finally, **a measured conception of the role of the State and public institutions that differentiates between the different legitimate fields of intervention**. The ethical and spiritual field is hence restored to free choice, open to the fullness of personal autonomy that fits in the perspective of an equality of principle excluding all domination and privilege. Considering the individual as such as the unique subject of rights does in no way entail indifference to the conditions of its achievement. The measured regulation of social relations and economic activity which does not threaten the freedom of enterprise adds up the social State of right to the State of right. In this sense, secularity does not prompt withdrawal on oneself: it does not confuse freedom of the individual with selfish individualism, nor the refusal of communitarism with the negation of the essential character of social and collective life. Setting the conditions of free debate and possible disagreement, secularity cannot itself be negotiated, except if one means to challenge what defines it, and in particular the strict equality between believers and atheists. But in that case, it is secularity itself which is compromised and one cannot call an "opening" what is in fact a debasement.

Secular law. The 1905 act of separation

Secularity was actually introduced in the law with **the acts of emancipation from religious supervision of school, public institutions, and then of the State**. It is by essence a separation of State and Church, which rules out all concordat regime. The official recognition of certain worships involves a double exclusion: that of other worships and that of non- religious figures of spirituality. It encroaches on the public sphere, alienating it to the domination of religions. It make no difference to recognize several religions: the alienation of the public field to religious persuasions is none the less patently obvious. It is therefore in no way secular. The Gallican, concordat, or Anglican logic remains closer to the traditional alliance between the throne and the altar than to the secular emancipation of public power. Secularity is not just the religious neutrality of the State. It is also and indivisibly its strictly non-religious character. This shows how much it excludes the alienation of the public sphere to religious plurality as well as the inequality of treatment of religions. The concern for a civic space common to all excludes therefore any alienation of the State and of public institutions to the plurality of denominations.

The secular emancipation was not negotiated with the dominant religious power which

opposed it (the Pope Pius X condemned it). The present evolution of the religious landscape therefore entails no obligation to revise secular principles, which, by the way, were greeted by the supporters of the dominated religions of the time, i.e., Protestants, Israelites, and Muslims, as well as by the agnostics and free-thinkers, and all the Catholics weary of the theological and political compromising of their church. Understood in its foundation, the separation of the State from all churches is the condition for the *Republic* to deserve fully its name, emancipated from all religious domination while at the same time emancipating the religious from all political interference. The essence of secular law is not bound to the dominant religions of the time, but to the demands which allow a republic to conform with its fundamental universality, that is to say to respect and embody the equality between believers and non-believers, as well as display what unites men beyond their differences.

The 9 December 1905 act opens on two indivisible articles, grouped under the heading, *"Title 1. Principles".*
"Section 1: the Republic shall ensure freedom of conscience. It shall guarantee free participation in religious worship, subject only to the restrictions laid down hereinafter in the interest of public order.
Section 2: the Republic may not recognise, pay stipends to or subsidise any religious denomination. Consequently, from 1 January in the year following promulgation of this Act all expenditure relating to participation in worship shall be removed from State, region and municipality budgets."

Hence grouped under the same heading, the two first articles of the law are obviously inseparable and are clearly referred to as principles. Religious freedom is but one version of the freedom of conscience (article 1) and is viewed only as a particular illustration of the freedom. Having to coexist with the freedom of choosing to be an atheist or an agnostic, the freedom of opting for a religion obviously belongs to a more general category which is the only one mentioned by the law. Insisting on "religious freedom" is in fact preserving the privilege of a spiritual option when the law henceforth rejects all privileges. This is why section 1 is inseparable from section 2 which stipulates that the Republic does not recognise any religious denomination. This strictly means that it has passed from recognising certain denominations (before 1905, Catholicism, Lutheran and Reformed Protestantism and Judaism) to renouncing all recognition. It is not passing from recognition of some to recognition of all, as a multireligious or communitarist interpretation would have it, but from a selective recognition to a strict non-recognition. This principle of non-recognition is to be understood in its legal sense as confirms the fact that no stipend or direct subsidy may be paid to any church by the State. It does not entail, of course, that the social existence of different denominations or that the atheistic or agnostic forms of conviction are ignored. Equality of all is a key issue for such legal provision as it is likely to remind one that the State is only concerned with the general good. The 1905 Act does not just stipulate that all churches are henceforth legally equal. It extends this equality to all spiritual choices, whether religious or not, by dispossessing the Churches of any public law status. Assigning religions to the private sphere entails a radical secularization of the State. It henceforth declares itself incompetent in matters of spiritual options, and has not therefore to arbitrate between beliefs nor to let them encroach on the public sphere to shape common norms. Separation and abstention in precept which Spinoza advocated in his *A Theologico-political Treatise* is thus achieved. Most certainly, this abstention in precept, the condition for complete spiritual freedom and actual equality between atheists and believers does not signify that the State does not acknowledge the existence of worships. But it takes them into account only by integrating their existence to the general regime of the freedoms of expression of convictions, whatever the philosophy which inspires them, and of association, the status of which was codified by the 1901 Act.

The neutrality of the State in that domain is inseparable from its non-religious character and from its strict exteriority to the areas where spiritual choices spread. The law in this way assigns religions

indisputably to the private sphere which is not only individual life but can include associations grouping people of the same allegiance. As to putting at the disposal of religious associations *"public places of worship"*, it does not derogate to the private law status of denominations, but is just evidence of a concern not to do violence to believers by depriving them from their familiar worship place. Section 4 stipulates that religious buildings are at the disposal of denominations, but article 12 establishes that they remain properties of the state. Section 13 provides for the creation of private law liturgical associations to organize their use. These three articles obviously are no longer about the constituent principles of secularity but about the modality of their enforcement and the historical transitions necessary to avoid traumas. They are not part of what the first title designates as principles and are not therefore in the same degree expression of the norm of law. As to the essential principle of the respect of religious neutrality, section 28 of the 1905 Act stipulates :*"It is henceforth forbidden to build or affix any religious sign or emblem on public monuments or on any place whatever, with the exception of religious buildings, burial places in cemeteries, funeral monuments as well as museums or exhibitions."*

Thus defined, secularity contrasts with the present situation in the Alsace-Moselle region which has retained a concordat status, as those three departments in Eastern France were under German jurisdiction in 1905. In these departments, denominations are recognized and subsidized, and religious study is taught to all children in public schools except if their parents expressly ask for dispensation. The obligation for families of such a request suggests that the norm is to attend religious study classes and asking for dispensation somehow places one outside the norm. The principle of the non-religious nature of public institutions, the conditions for the equality of citizens whatever their spiritual choice, is therefore not respected. Could one imagine the opposite situation, that is a course of atheistic humanism for which religious families would have to ask for a dispensation? A humiliating obligation contrary to the discretion principle which stipulates that no one should be obliged to express one's beliefs.

P.S.

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