

## French Laicization in the Worldwide Context

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JEAN BAUBÉROT\*

*ABSTRACT: The author describes the essential characteristics of the law of 1905 and speaks about the relations between the Church and the State today, before embarking on the two other sensitive domains of the French laicization: that of national identity and that of the school. He ends his paper by an examination of the law which raises a problem of March 2004 in France.*

The French Constitution defined France as a "laic Republic, which respects all beliefs". The French generally consider that laicization constitutes a singularity of their country. This singularity has been reinforced with the March 1004 law, interdicted the bearing of "ostensible religious signs" in public schools. This law adopted after the work of a Commission called "Stasi Commission" had been fiercely criticized in many countries, and it nearly reinforced the misunderstanding between France and other nations. Having been a number in the Commission but having not voted the law proposition, I am ready to explain the reasons and especially to indicate that one should not reduce the French laicization to the law of 2004. The law on the separation of the Church and the State, adopted in December 1905, the centenary of which had been celebrated last year, is a much more fundamental laic law. In fact, this law of 1905, always remains the base of all relations between religions and the State in France, the rule of the principal activity of the French laicization.

The law of 1905, in its 1<sup>st</sup> article, "ensures the conscience freedom" and "guarantees the free exercise of the cult" (in the French juridical language, cult always means

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\*. **Jean Baubérot** is Honorary President of the Religious Sciences Department at the University of Paris-Sorbonne's *Ecole Pratique des Hautes Etudes*, and Director of a *Centre national de la recherche* (CNRS) research group which studies sociology of religions and secularism. He also holds doctorates in history, philosophy and human sciences from University of Paris-Sorbonne, and holds the only Chair in French higher education devoted to secularism. Twelve of his works have been translated into various languages, and he has given courses and lectures on secularism in the universities and research centres of twenty-four countries. Previously, he served as a member of the Commission on Secularism presided by Bernard Stasi. In 1997–98, he worked with Ms. Ségolène Royal, minister responsible for citizenship education. He is a member of the National Order of Merit and has also been awarded the Gandhi Medal by UNESCO in recognition of his work promoting dialogue among civilizations and religions.

religion), in the unique limits of a democratic "public order". These guarantees precedent 2<sup>nd</sup> article that brought about the separation of the Church from State establishments. There existed from 1802 to 1905 three established, recognized religions, with their clergy salaried by the State: the Catholic religion, the Protestant religion and the Jewish religion; the other religion were only tolerated. "Recognized" religions were both protected and salaried, but were also strictly controlled by the State. The end of all the official character of religion, the separation of the Church from the State had thus taken place within the frame of a widening of the freedom of conscience and cult. The State is neutral towards religion, it does not pay for their clergy and does not subsidize them, but it guarantees their free exercise. In the periods of tension between religion and politics, the State takes care so that religious practice can be performed in a serene way. At any weekend, in France as in other democratic countries, millions of people go peacefully to churches, temples, synagogues, mosques, pagodas etc. Actuality pays more attention on difficulties. But reality also consists of peaceful, calm aspects that do not "agree" with newspapers or are not mentioned in the television.

Besides, the French State, the French justice no longer have the last word on the French territory about the conscience and religious freedom: a citizen or a group finding himself hurt, after referring to all French jurisdictions without gaining the day, may make a call to the *European Court of Human Rights and Fundamental Freedoms*, a convention that France has ratified. Thus, it is a supernational court which will solve the question in the last appeal. That is significant: the Nation-state is no longer in a world-wide context, the sole relevant framework for managing the freedom of religion. In my opinion, it would be desirable to work so that an international Court could become on the scale of ONU, an analogous legal instance, which judges from the Universal Declaration of Human Rights adopted in 1948.

The separation from the state of formerly "recognized" religions involves a double separation: the separation of civil law from religious norms and the separation of citizenship from religious membership. Religious institutions in France are institutions of civil law. But the privatization of religious institutions and the legal working of religions in accordance with an associative way do not mean that religion should be restricted to the private sphere. Religious authorities express their standpoint in many debates of the society in social questions as well as in moral ones; they have regular contacts with the public powers and representatives of religion take part in consultative Committees like *the National Ethic Committee*. In practice, the privatization of religious institution means that religion is considered as a personal choice. The school is a public institution because instruction is obligatory; religious institutions are private because everybody has the right to have his own conviction.

The situation is generally quiet, and tensions that can exist like some blamable acts of anti-semitism or anti-musulman (Muslim) acts refer to racist acts and repercussions, in France, from the international context, especially from the Middle-East conflict. Symbolical identifications with Israel from the Jewish side, and with Palestinian Intifalada from the arabo – musulman side – serve as an identification mark in a context in which the development of world trade and a mass consumption drive people to a standardization of behaviors, and as a consequence, they can exacerbate the research of particular identities. In the periods of international conflicts, religious authorities of different religions have played an appeasement role. There exist in certain towns places of dialogue between representatives of diverse religions, in relationship with municipalities. This is the case of *Marseille - Esperance* for example, for the town of Marseille, the second one of the country, which from its situation of a Mediterranean port includes a great variety of religious groupings.

The French musulman community is quantitatively by far the most important in Europe (between 4 and 5 million people, that is from 6 to 8% of the French population). It meets with specific problems, due to the still heavy memory of the colonization and decolonization and to the fact that many of its members belong to unfavored social categories. Then the recent aspect (of 20 to 30 years old) of its massive implantation into the French hexagon of a great implantation due to the family regrouping at a time when the economic crisis has succeeded to the years of expansion. Mulsulman "immigrated workers" came to France at the time when France had a great need of man-power, then they had been joined by their families when unemployment developed. Wards inhabited by most musulmans are words where unemployment figures are from 2 or 3 times greater than the national average, and in relationship with this situation, the middle and small delinquency have progressed and lodgings are not sufficiently large.

Religious problems are added to socio-economical problems. The rapid growth of the musulman population leads to need of more mosques though their number has fairly rapidly increased. Some familiar traditions bound to the culture of those who are not familiar with most French people may sometimes shock them. The terms bound to the law of 1905 to ensure an affective freedom of cult only progressively apply to the musulmans (for example, almoners in closed places). However, because laicization works and allows to find solutions, the situation of Islamism in France has overstepped the decisive cape with the constitution of the *Conseil Francais du Culte Musulman* (CFCM) in April 2003, completed by regional councils. This event has had much less echo than matters on Islamic veils, however I think it to be very important in the future provided that the international context would not be difficult.

After all, at the level of the juridical and political frame of the separation of religions from the State, I think that the French laic a situation very adapted to the worldwide state

of belief. The religion has legally an associative character and there does not exist any a priori control of any associations. People who wish to have together religious activities can found up an association. If their enterprise succeeds, they can create many associations and combine them. This situation is conform to a religious freedom the limit of which is the damage to the democratic public order. In fact, there exists a mistrust towards new religious grouping not widely known, the practice of which can sometimes perturbs the public order. An interministerial organism created in 1997 gave rise to the fear that the State would overstep its role of an arbiter and would no longer adopt a neutral attitude. In 2002, this organism have been reorganized, and normally its role at present consists in fighting against eventual "drifts", but not against the grouping. However, in France, as well as everywhere, democracy is never perfect and citizens have to be very watchful before possible outages upon the religious freedom.

The juridical relation to the State is not the unique aspect of the problem. Another level of laicization concerns the national identity which has been historically constructed and the civic culture, the specific mentality bound to this identity. In the sphere, French laicization admits relations of proximity and of distance with the way in which the freedom of conscience has been developed in the other democratic countries, for example in the United States of America which shares with France the fact that the republican regime is an ancient reality while it is a clearly more recent creation in many other countries. We have therefore to make a brief comparison.

The American Declaration of Independence (1776) affirmed "*that all men are born equal, they are given by the Creator certain inalienable rights*". The human rights thus came from God and the fact that they came from God was that no human being could suppress these rights. On the contrary, in the *French Declaration of the rights of Man and Citizen* in 1789, the rights of man did not come from God. The Declaration of rights was only done before the "presence" and under the "auspices" of the Divinity. Why this difference? Because in the new-born America, there existed already many religious denominations; therefore when saying that God was the author of human rights, this sentence did not give the power to any particular Church. On the contrary, in the France of 1789, after the Revocation of the Nantes Edict which interdicted Protestantism, the Catholic Church hold the position of religious monopoly; if God was recognized as the author of human rights it would be to recognize that the Catholic Church would have the right to interpret there rights, which would fix the civic moral, the democratic spirit of laws, in short it would exert a moral authority on the whole nation to the prejudice of the State and the political representation of the nation.

The foundation of America was carried out in breaking off with the ancient motherland of England and its established Church. Even if some tensions could have existed, it did not give rise to any major conflict between religion, politics and society of

the new American nation. On the contrary, the emergence of the modern France which was born in the French Revolution, from a direct conflict between the new society and its revolutionary ideals and Catholicism, the religion of the State under the monarchical Ancient regime. This conflict had many stages, and because my report is not a mainly historical one, I shall not recount them. The important fact is to understand that the crisis of the French Revolution would generate, through the whole XIX century, a long conflict that historians qualify as "conflict between the two France". It was not a conflict between "believers" and "non believers": The number of people "without religion" in the census of 1872 was but 82.000 people, in a population of more than 36.000.000 inhabitants. It effectively concerned two very divergent visions of the French national identity.

For a militant Catholicism, the identity of France is before all else a Catholic identity; France is a "Catholic nation". According to a common expression it is even "the first daughter of the (Catholic) Church". On the contrary, for a large laicization movement which involves not only people "without religion" but also members of religious minorities who have become free owing to the Revolution, and an important number of more or less practising Catholics, the identity of the modern France should not have a religious dimension, it comes from the French Revolution and its values, especially from the *Declaration of the Rights of Man and Citizen* of 1789. The pluralism that attracted the system of recognized religions had not been able to function, because it had been dominated by the dualist conflict around the national identity and the attempt of a religion to dominate the civil society.

This conflict had strong political consequences: a Catholicism which worked against the Republic and the difficulty that the Republic had long endured to be solidly implanted in France had been rightly or wrongly due to this Catholic resistance. In this conflict, laicization constituted the symbolical advantage, the value of a camp. In 1905, it had triumphed in setting up the separation of the Church from the State, and this separation, as we have just seen, was liberal, it respected the religious freedom. By degrees, this separation has been accepted by the militant Catholicism. Laicization thus became more inclusive. In 1946, the Constitution stated that France was a "laic Republic" putting a stop to this conflict on identity. But because in France, the State is an ancient and solid entity while the unified representation of the national identity is recent and seems unstable. This identity, regarding the past struggles, has a strongly political content. In France, when people say "the Republic" it is a way to say "*France*" despite the existence of many other Republics all over the world!

An identity which is not very at ease with itself needs to overvalue its specificities, to be strengthened in an opposition. It is what sometimes takes place. At present, laicization is no longer a subject of conflict between Catholicism and the Republic. The Catholic Church has recognized that it lives free and at ease in the framework of the law of 1905

on the separation, and it does not want to have it changed. Starting from this consensus, in the 1990 decade, the expression of “*laicization, a French exception*” is born. I would argue that this is rather the expression of a national need of identification before the European construction and all the rummage caused by the worldwide union than the strict designation of a reality because other democratic countries have other laic systems in which similarities are greater than difference. The highlighting of a specifically French identity is important especially toward the United States of America when people are afraid of the American hegemony. The expression of *Anglosaxon* communitarism expresses the fear to go towards a system that is thought, rightly or wrongly, to be the system which functions in North-America where there would exist a juxtaposition of close tight communities, with the tendency of each community to have its own rules. In this context, it exists therefore a will to prevail the exigency of the common life over the own particularities of each community.

The dimension of the national identity of laicization plays equally a role to meet the muslims and Islamism. The weakness of democracy in many Arabo - muslim countries, the impression that some practices have been imposed despite the verset of the Koran. “In matters of religion there is not any coercion”, the presence of Arabo-Berber groups and intellectuals very opposed to this imposition and partisans of a very strict laicization, all these factors play an important role. It is at least what I propose to understand why matters on the Islamic veil have such a great proportion in France. This aspect will be the object of last part on laicization and school.

The school laicization in a long historical time has been the most conflictive aspect of laicization. Why so? Because the school socializes people to a culture, it trains citizens at the same time it gives an instruction. The “*debate of two schools*” has long existed, on the one side, the laic school, where people have been taught the laic moral and the republican civis; and on the other side, the private school (at least) 90% Catholic, where the Catholic moral was taught, and it propagated another vision of France in preserving a very critical view on the French Revolution. The school therefore was the strategical place of the conflict of the “two France” with its divergent representation of the national identity.

This conflicting situation, born in XIX century, has become constitutional (1946) and has been accepted by everybody. In fact, from that moment, the State has progressively provided subventions to private establishments, then it has signed veritable contracts with them (1959). The laic active members did not accept that public funds supplied private schools and they wanted to unify public and private schools into a single laic system of national education. They have not been able to carry out this project. Why so? Because, since the beginning of XX century, the catholic church has changed and it no longer taught another vision of the French identity. And from 1962 to 1965, the Vatican Council II has explicitly ratified many modernity values. For the great majority of the

French people, the existence of these two schools no longer threatens the national unity. And as parents of pupils are not always satisfied with the quality of public schools, they want to have recourse to an other school. Every year, about 16% of pupils enter a private school, but 40% at one or another time of their school-time go to a private school.

The school has to perform a more and more difficult job at the rate of an authority which is not without relationship with the development of the means of mass communication at a world level and the great number of pupils from various nationalities and cultures. Children spend more time before their televisions than in school. Especially with the internet, a horizontal communication develops, which ignores the boundaries and sometimes is not conform to the more traditional transmission of knowledges and culture. People also note a development of particular revendications of identity at school often bound to religion, that sometimes creates difficulties to the education programs and to the authority of professors.

It is this context that the process which leads to the law of March 2004 that has taken place. From my viewpoint, it is not a good law has been thought of for good reasons. I would like, in ending, to explain my viewpoint, on this paradox. The Stasi Commission has made proposals for many reasons that I find valuable. In the first place, it wanted to send a clear message to radical Islamists and mark a stop hit to face the growth of some revendications which would destabilize the school. Indeed, radical Islamism remains at the present time a small minority in France, but there however exists sometimes some imams who find themselves persecuted before the tribunals for having talked of matters in contradiction to democratic values. The second reason concerns the defence of the equality between man and woman.

Some see in the foulard, the symbol of a conception on woman which injures this equality. At last, the will to defend the laic school as a place of neutrality where various religious (or non religious) appartenances of students should not disturb acquisition of knowledge, the exercise of the critical spirit and the formation of citizenship reiterates that this law concerns but public schools.

I approve these three reasons (defence of laicization, of man-woman and school equality) and it is the reason why I have not voted againsts the proposition. But I have abstained, and because I was the only person to do so. I have hindered a unanimous vote. It was therefore a grave standpoint and I have adopted it because in my opinion, one should have otherly express the preoccupations of the Commission. For example, if people had decided to aggravate measures againsts forced marriages that some young musulman woman had undergone, they should have to give out a clearer message to stop them againsts Islamism to defend the equality between woman and man. I am sure that many non extremist musulmans want that young girls wear a veil. The wearing of the foulard does not always, in my opinion, signify an interiorization of a pseudo-inferiority

of the woman, and women engaged in a feminist struggle in the Islam movement wear a foulard. Formerly, if any harm to the school program, to the authority of the teachers and to the discipline cannot be admitted at school, the school can be able to combine neutrality and openness with religious and cultural diversity. Then the debate is a better way to harmonize different freedoms and rights to ensure a “public order”, the most democratic one possible.

At any rate, the law is now in force and young girls who do not want to take off their veils may continue their course of study in private schools of contract or follow courses by correspondence. A combined reflection on the new conditions of laicization is taking place. A *Haute Autorite de Lutte contre les Discrimination et pour l'Egalité (HALDE)* has just been established. A poll has been conducted to ask the French what is according to them the main characteristic feature of laicization. Obtained answers are very clear: the most important idea is to “place all the religions on the same equal level (32%); then “to separate religions from politics” (28%) and “to ensure freedom of conscience” (28%). A more conflicting conception of laicization (“to drive back the influence of religion in the society”) had but 9% of the polls. Laicization is a triangle constituted by the separation of politics and religions, the respect of conscience freedom and religion, and equality between different religions. This last point is the essence of the privileged task of the French laicization in this beginning of XXI century.