Laïcité

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* The point of this volume being to define the notion of « laïcité », which cannot be reduced to the concept of a secular or non confessional position, we decided, following the steps of Paul Ricœur in *Sur la traduction* (Bayard 2004), to adopt the French *Grundwort* instead of trying to translate it.

certain form of religious spirit, far from being an hindrance, may highly contribute.

Laïcité is neither a contract nor a current of thought in the usual meaning of the word, nor a "cultural exception". It is a philosophical concept which, unlike the notion of tolerance, is not intended to ensure the coexistence of freedoms as they are in a given society but to build an *a priori* space being the condition of opportunity of such a coexistence. We try to show that this concept works in the same way as some kind of experimental emptiness : it is possible to create a political association without relying on pre-existing communities in such a way that the principle dissolving the social link constitutes the political link. More widely, the concept postulates a critical stand that begins a dialectic of doubt and a conception of humanities. Finally, *laïcité* having no worse enemy that civil religion, we suggest that the current sacralisation of the social link, and more generally of the mere *form* of religious thinking, is a modern variant of theological politics.

What cannot be made universal in justice, even beyond its legal application, is due to considering the original reality of behaviours and suggests to see in these behaviours neither an individuality nor a particularity specifying a given gender, but an irreducible existential singularity.
Through this, this universal can come to terms with singularity and *laïcité* can reach its full dimension: promote the human character which interprets generic and universal roles but also help protecting the simple state of person subtracted from every part at the same time and reflection of the uniqueness that all monotheistic religions lend to the God of Revelation.

The project to separate State and Churches was part of the Republican party program in 1869 at Belleville. It was abandoned when the Republicans came in power in 1877, because they were anxious to retain the prerogatives granted to the State by the Concordat.
This position was sustained until 1904. Relinquished due to the reopening of the diplomatic relationships between France and the Holy See, the separation was unilaterally decided by a law of 9 December 1905 drawn up by Aristide Briand who tried to make the text palatable to the Catholics but was finally not able to.

The author analyses, on the basis of the principles of *laïcité*, the development of the administrative jurisprudence since the law of 1905. The judges, despite

the evolution of the issues, have remained faithful to the spirit of balance of this law.

Historically, laïcité and woman rights are not systematically related. In the legacy of political philosophy, the conception of private and public spheres and of the sexual inequality have a decisive influence on non-confessional thought, on the Civil Code and the policies of laïcisation. Feminist pressures were essential in the adoption of woman rights and the connection between laïcité and sexual equality.

Going back to the origin of the *laïcité* principle shows it is inscribed in law mostly through the relationship between the State and the catholic church. The problem of sects must then be seen as coming out in an already secularized contexte, inside a legal system where the question is no more that of the status of religion but, more widely, that of the status of belief. But law does not define religion more than it defines belief. Therefore one must concentrate on practical consequences and legal effects of belief and among those, to an issue which seems to emerge autonomously since a decade: the place of proselytizing and how it connects to the principle of *laïcité*, which one might see as a pointer to the crisis of the French style *laïcité* model.

This essay attempts to give a few clarifying elements of a notion often used in a confusing way. The author begins with a short presentation of the various European *laïcités*, with an emphasis on the Belgian *laïcité*. Then he analyses the particular situation of the United States which gives birth to lots of misunderstanding on this side of the ocean. He then proceeds to the tricky issue of the "secular morality" by recalling the great debates it sparked off at the time of the *laïcisation* of public education and during the Third Republique. Finally he questions the very controversial Muslim headscarf, before concluding by using the Rawlsian notion of "overlapping consensus" to try and lay the basis of a *laïcité* levelling with our time stakes.

The issue of *laïcité* in Muslim countries cannot be asked in terms of separation between spiritual and temporal powers, for, at least in Sunni Islam, there never was any spiritual magisterium in church or clerical form trying to compete for power with civil authorities. The point here is that the State power exerted in all these countries is derived from rules and imperatives that take their source in revealed texts, seen as sacred and immutable. This influence of the

religious over the State power led some of these countries, like Iran or Saudi Arabia, to curl up in a theocratic type of system. Consequently, the attempts of two Muslim countries, Turkey and Tunisia, to establish *laïcité* are unreliable and remain unfinished. It is in fact more by adopting without qualification the principle of freedom and by extending it to all areas of public life that Muslim countries will be able to open to modernity more than through *laïcité*.

Through a rigorous analysis of the hierarchy of norms inside Islam, the author demonstrates that the Sharia, in particular about the Islamic scarf, allows for an adaptation, with a canonical basis, to the diversity of social situations.

In this article, the author examines the justification of the ban on Islamic headscarves in French schools, colleges and lycées, as given by the Stasi Commission. He argues that the main argument put forward in the Stasi report in support of this ban is acceptable in principle. Then, the author asks whether the same kind of ban would be justifiable in Canada. For this purpose, he reconstructs the «Canadian» position that postulates the existence of a fundamental right to reasonable accommodations or exemptions on religious ground in schools. He recalls that if this position were valid, then it would require a much stronger justification of the ban than the one put forward by the Stasi Commission. Yet, the author criticizes this position and shows that it is ill founded in principle. The argument does not mean that the schools are morally entitled to ban all religious symbols for any kind of reason. However, it means that if the facts similar to those that support the ban on Islamic headscarves in France existed in Canada, one could not oppose the existence of a fundamental right to reasonable accommodation in schools on religious ground to a political decision to ban this religious symbol in schools. Finally, the author maintains that a recent Quebec Court of Appeal decision dealing with the right of a young Sikh to bear his kirpan at school supports his main thesis.

Since 1989, pupils wearing, in French Republican schools, clothes or signs obviously signalling their religious creed have been at the roots of essential issues. The Iranian revolution, in particular, started more or less obvious assertion of beliefs and faiths. The media revealed the crisis, commissions wrote white books and conclusions. A law seemed necessary: hence the law of 15 March 2004. Evidently, it wanted to break away from the qualified doctrine of the Conseil d'État, marked by its decision of 27 November 1989 and consolidated by a series of rulings following this line. However, will the new law be in a position to sort out most worrying behaviours ? Of course, the debates allowed to breathe new life into the principle of *laïcité* at school, a revisited and enriched principle. A balance is still to be found between this principle, the freedom of conscience and the educational duties resting on parents and/or representatives of pupils. But what is to be understood by signs

or dress obviously showing off a religious creed? This obviously lets us anticipate debates. And what is to be understood by religious creed? Here also, tricky questions may arise since, until this day, neither the Conseil d'État, nor the European Court for Human Rights have taken a definite stand on the complex issue of religion. There is also the active repentance of the law-maker, the required dialogue, till where, between who and who, and if it fails what will become of the pupil, here also an obligation to find a replacement mean rests on the State, if one may say so. In short, many questions remain, the law as it was promulgated will shift debates that will endure. Tomorrow, administrative courts, among others, will have to settle the difficulties that will no doubt arise, the responsibility of the schoolmasters remaining heavy despite what they expected from a clarifying law, which purpose was a better legal security and predictability.

The vote of the law of 15 March 2004 controlling the right to wear religious signs at school gave rise to an heated debate on the issue of the compatibility of French law with the European Convention on Human Rights. This issue is not restricted to school and must be extended to the problems rising from the religious practices of civil servants. The article 9 of the Convention protects religious freedom and the European Court has already had the opportunity to rule on matters of religious signs wearing. Now, it leaves, in these matters, a very wide margin to the State, margin justified by the complexity of the issue at stake. It is therefore difficult to assert definitely the conformity or non-conformity of French law with the convention. However one may single out two lessons from this study. On the one hand, the case of civil servants is more intricate than that of pupils. On the other hand, measures restricting religious freedom must always be appraised by verifying the necessity of such measures regarding the sought after legitimate goals.

The principle of *laïcité* build a community of citizens from a double wager, very demanding on the individual reason of a State that embodies the general interest. Its questioning fit at the confluence of the great transformations which are redefining the functioning of democracies and of the identity crisis France is going through. Hence the necessary reinvention of *laïcité,* dulling the new declination of citizenship at a global, European and national level allowing to bring back together the existence of universal rights and values on the one hand and the plurality of culture and the diversity of religions on the other.

DOCUMENTS

CONSEQUENTIALISM IN MORAL AND LAW

What is important is not the "aristocratical" question of the foundations of a proposal, but the "democratic" question of the value of its pratical consequences (Popper): in morality, that is not experience, but our conscience that decides to accept such or such consequence. Rawls contrasts "deontological theories" to "teleological ones" : the first ones define justice independently of the good, while the second ones define it as the maximisation of the good. But a deontological theorie is not necessarly anti-consequentialist : "Not to take consequences into account would simply be irrational, crazy". Any rational moral theory is bound to be a "moral of responsibility" (open to criticism) and not a dogmatic "moral of conviction", even if some basic intuitive judgements are our "fixed points". Consequentialism is not necessarly utilitarian : one can try to minimize injustice. These hypotheses are illustrated by several juridical examples.

In the study of the resources and limitations of philosophical consequentialism in evaluation tasks, we often attach a special importance to the division between information that pertains to choice procedures and social-outcome information. The problems of consequentialism are standardly addressed with the starting point of the intrinsic limitations of any formulation of social-evaluation principles which would base itself solely on social outcomes, thus forgetting other aspects of individual action and social life. In this paper I try to bring the inquiry back to certain underlying questions, which relate to the conceptualization of action. It will then become apparent that a notable part of anti-consequentialist concerns can be identified with the reasons we have, from within a consequentialist conceptual framework, to reject a certain description of consequences as inadequate.

This paper examines what might be called « the prediction objection » that could be raised against consequentialism. The objection runs as follows. Consequentialism requires the agent to choose the action that brings the best overall outcome. But it is often impossible to know how the consequences of our actions are going to turn out. Consequentialism requires us to make predictions about consequences that we are not always in a position to do. Although consequentialism has been subject to many objections, this parti-

cular objection has received relatively less attention. It presents nonetheless a significant challenge for it claims that consequentialism denies the « ought implies can » principle. The paper argues that a version of consequentialism can be devised such that it overcomes this problem. What is offered is not an overall defence of consequentialism, but merely an argument that conse

Consequentialism has often been accused of being unable to provide a plausible normative theory. The reason is that consequentialism seems to contradict some of our fundamental convictions about the value of our motives and character. In this paper, I am critically assessing some strategies that are supposed to improve the consequentialist theory of the right action by an account of the value motivational dispositions should have. These strategies are : sophisticated, motive and global consequentialism. My point is to show that these improved versions of consequentialism actually change its structure as a moral theory and, subsequently, to give an insight on how to develop a successful consequentialist theory.

Economic liberalism can take two different forms: the first is deontological and promotes individual liberty as an intrinsic value; while the second is consequentialist and mobilizes individual liberty as the relevant means to obtain a prosperous economic order. Political economy and its social philosophy are consistent with the latter liberalism, which requires two conditions: an analytical structure in which the individual voluntary actions produce involontary consequences; and also free market faith that defines these spontaneous results as socially advantageous.

A consequentialist approach to the emergence of norms can be found in the classical analysis of Prisoner's dilemma situations. This paper focuses on the moral aspect within those norms. They are based upon the actors' self-interest but give them at the same time the possibility to act, for moral reasons, against their immediate self-interest (or particular interest) for the sake of general interest. The paper examines the success of this type of moral vindication in normative economics. It stresses the difficulties that they nevertheless raise.

In this article, I wish to examine the consequentialist model when applied to moral problems of collective agents, more precisely to collective responsibility. Typical discussions of collective responsibility take place in a situation where groups in themselves, or their members, are blamed for a fault or praised for a just action. This work will examine the matter in a different light, in that it will define responsibility as a moral project. Furthermore, this article offers a consequentialist version of the collective responsibility principle that can answer to the well-knowned objection following which consequentialism is too demanding for the agents.

MISCELLANEOUS STUDIES

Theories of interpretation are sometimes classified between "cognitivists" and "sceptical", according to the criterion of the answer they give to the question whether true and false predicates are applicable to the interpretations laid down by lawyers. But the terms of this distinction are relative values of a scale, which is not a merely analytical dimension but also a cultural variable. This classification is also ambiguous because of the superposition, in the semantics of its terms, of the different levels (including "meta-ethics" and epistemology) of the philosophical and theoretical reflection underlying every conception of the critical controllability of legal interpretation.

The word with multiple meanings or standard bears a very original status. Of a flexible nature while having gained acceptance as an inviolable rule of law, it originated a sociological case-law. But its very peculiar quality coming from an intra legem abdication of the lawmaker also allows it to create the rule of law, if the law itself does not happen to be a word with multiple meanings. Here the paradox is complete.

The issue of the implementation of the rights of wage-earning authors is raised in many activity sectors; usually solved in France, at least in the private sector, by the overall non-transfer of works to come. This hybrid solution mixes payment by wages and protection of the patrimonial rights of the author-creator; costly in terms of the transactional costs involved, it constitutes a rational answer through the incentives it implies.

With regards to the Arts, the French law of criticism, which is rather unknown, first stems from the right of the press, which rules the way of handling questions of defamation, the right of reply and then from the civil law (art.1382). All these laws ban any incursion of art criticism in the economic field, which would risk damaging professional esteem and would be interpreted as a will to harm. This right solely deals with cultural goods and contributes to characterise them. All other goods obey the right of advertising (comparative or misleading advertising) linked to the notion of denigration, which depends on unfair competition and the right of trademarks. Within the strict frame of laws, it is illegal to criticise any good, which is necessarily the property of a competitor. It is also strictly forbidden to criticise industrial goods from a subjective point of view. In the cultural field, these rules are the exact opposite of the ones applying in the economic field: their criticism has to be based on personal judgement.

This article tries to demonstrate that the Law influences the way we consider the goods, treating them either like (subjectively) open, or not open, to criticism goods. The qualification of goods thus depends on how we differentiate them and contributes to define the cultural and industrial fields.

The author studies the relations between theology and politics in the work of the philosopher Giovanni Gentile, Prime Minister for public education under Mussolini.

In the Civil Code, the legal alimony duty was created by mixing rules pertaining to the state of persons, to the maintenance obligation - civil or natural - and to the "status" of things. An overlapping of categories which operates a fusion of the civil law trinity of persons, things and obligation, building up an institution where the internal relationship between the three notion can be observed. They seem to be based on a fourth notion, which serves as a common conceptual basis: the legal body.