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La Laïcité et la Liberté de Conscience

Although Article 10 of the high-minded Declaration of the Rights of Man and the Citizen states explicitly, “No one should be disturbed on account of his opinions, even religious,” and although the Constitution of the Fifth French Republic recognizes the *Déclaration* as fundamental law (“La Déclaration”), France today finds itself uncomfortably pulled in every possible direction by the forces of religion, popular will, secularism, and natural right. When former President Jacques Chirac and the French legislature outlawed wearing conspicuous religious symbols in public schools in 1994, they violated that farseeing Article 10, taking the country of Voltaire and Rousseau down the wrong path. For not only does the “*Loi n° 2004-228 du 15 mars 2004*” criminalize religious expression, it also denies certain citizens the basic liberty to live according to their perfectly legitimate beliefs. It is, in effect, a failure of democracy that the French people will not rectify alone, and so the rest of the world must advocate for individual rights and guide the French state back to its noble roots.

The law, effective since September 2004 (“Loi”), has above all targeted Muslim students, as well as a handful of Sikhs (“Turbans”), even though the text itself mentions neither specific religions nor articles of faith (“Loi”). In a country where these minorities make up roughly 10% and less than 1%, respectively (Religious Freedom Report), those results could easily be considered religious discrimination, an abuse largely criminal in and of itself.

Yet, even if they were proportional to the demographics, the expulsions would be equally unacceptable, for they deny a number of fundamental rights to their victims. In any democracy, the state must be denied the power to silence its citizens; they must have the right

to express and profess any belief in any manner. Without that right, the democratic system simply doesn't work. And since religion is at the very heart of the way people look at the world and politics, government intervention in the spiritual realm can do a lot of harm. In this case, the tragedy takes place in public schools, where beliefs ought to be brought into contact and students exposed to the diversity of their country, but instead the state refuses to allow less traditionally "French" faiths to be represented.

Even worse, laws like the French ban force their subjects to live hypocritically, in violation of the edicts of their beliefs, or to accept unequal treatment, even punishment. There may well be institutional prejudice against them, but the real reason that Islam and Sikhism have been singled out under this law is that many among their ranks believe they have a sacred obligation to wear the headgear that the French state considers a threat to its rigid *laïcité*. They choose, then, to obey their conscience rather than the law, and they suffer for their choice. Inasmuch as their beliefs don't run contrary to the essential goals of the state—that is, according to the Declaration of the Rights of Man and the Citizen, the preservation of "liberty, property, security, and resistance to oppression"—then the state shouldn't be able to forbid the actions those beliefs require. That is, indeed, exactly what is meant by the "preservation of liberty" or "freedom of conscience." And by imposing such a stringent and unnecessary restriction on its public school students, the French government has denied them the liberties it is supposed to protect.

To combat its excesses, it's necessary to understand the French *laïque* phenomenon. After all, it's far from being a totalitarian regime foisted on an indignant nation; a vast majority, 69% of the population, supported the law shortly before it was passed ("Chirac"). Rather, it's a very powerful and important movement in French society that can lead to abuses by what Alexander Hamilton in his time called a dominant "faction," "a number of citizens...united and actuated by some common impulse of passion, or of interest, adversed to

the rights of other citizens” (McClenaghan 783). This is a problem at the very center of republican theory; if the people, as a whole, have unlimited power, each individual stands to lose his personal power, or liberty, at any moment. In France, freedom of conscience isn’t well enough protected against government power, and the faithful fulfilling their religious obligations suffer at the hands of the overzealous majority.

With so much violent religious history and such a well-established tradition of stringent secularism, the (non-victimized) French generally view the headgear ban as a sound barrier against a religious menace. Convincing them otherwise will not be an easy process, but it is one of the many struggles necessary to today’s lovers of liberty, if not the most urgent. Obviously, a large part of the effort must simply be a mobilization of ideas and an open debate. Pamphlets must be written, demonstrations held—in and out of France—and calls for solidarity issued. This is the action that must be taken by individuals and organizations: reaching out and trying to persuade.

The other side of the struggle is the political one, taken on by governments driven by the will of their peoples. Instinctively, one might think that the United Nations is a forum where the states of the world could compel the French Republic to respect its people’s civil liberties. Interestingly, the current French Minister of Foreign Affairs, Bernard Kouchner, was one of the key advocates of UN humanitarian intervention on behalf of oppressed minorities (Myly). It would seem conceivable that the UN force France to annul the headgear ban, but the history of the Cold War says it would be extremely unlikely; just as the Soviets used their veto power to prevent Western interventions in the third-world, France would automatically block any such attempt on its own soil, nonviolent though it might be.

Instead, the European Union could serve well as an instrument for change. Despite the rejection of the European Constitution, the EU seems likely to concentrate more and more power with the revised constitutional treaty. The European Court in Strasbourg has the

authority to review cases pertaining to such laws about secularism. The Court has favored *laïc* states such as France and Turkey in the past, but political activism in Europe could eventually change the composition of the Court, as well as the European Parliament, which stands only to increase its authority. Because participation in Europe-wide elections tends to be low, they should be easier to influence than national elections, where participation usually runs highest.

Such efforts won't strive to challenge or unseat the authority chosen by popular will, but simply to establish a strong defense for the freedom of conscience. This essential right has been eroded in France, where it is central to many high tensions, and the stability of French democracy depends on strengthening it and similar liberties. When the Fifth French Republic can stay true to the ideals of the First without falling prey to its excesses, it will have moved far along the road to utopia.

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