

## The Republic Tradition and The “Hijab” Controversy

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The controversy around the “Hijab” (“foulard”), piece of clothing worn by the Islamic faith women, in many western countries, allows the perspective of how political traditions influence Law and legal solutions adopted by countries. The republican tradition is summoned every time the “Hijab” controversy is mentioned. However the same republican political tradition may lead to distinct political and legal solutions ( Besson & Martí, 2009: 6-7). While in France the Law of “ Laïcité”( Law of March 15<sup>th</sup> 2004) prohibits the use of any ostentatious religious symbols in public schools, having the current President Nicolas Sarkozy fight for the extension of the scope of the referred law, in the United States of America there is no law that prohibits the use of the Islamic veil in public schools, having voices like President Barak Obama criticise the European laws on the subject.

Other European countries have given attention to the issue (including countries of Islamic majority such as Turkey, where the debate is intense). The interesting part of the debate is the discussion on the reasons that justify the different conclusions that arise from the same political tradition. The point relies on the relationships between the State and the Churches and freedom of religion . The Anglo-Saxonic republican tradition and the French republic tradition, that have a common basis, diverge when the issues refer to religious and cultural differences in the public scope.

The French republican tradition invoked for the prohibition of the “Hijab” in public schools develops around three traditional principals: “Equality, Freedom and Fraternity” and can be summed up in the following way:

- a) The use of ostentatious religious symbols questions the neutrality of the public sphere that is, in itself, a guarantee of equality between citizens of different beliefs and religions, violating equality;
- b) The “Hijab” translates into a form of oppression of women, limiting freedom and autonomy of women that use it, offending liberty;
- c) The “Hijab” translates a special affirmation of cultural differentiation that questions national identity and mines the inter-ethnic solidarity, devaluing ‘fraternity’.

This orientation was supported in the Stasi Commission Report, in charge of studying the social, political and judicial implications of the “Hijab” controversy and served as the basis for the March 14<sup>th</sup> 2004 Law. It corresponds to the said official republican tradition (Laborde, 2008), born from the French revolution of 1789 and made official in the third republic through the Law of Separation between the State and the Church in 1905. Based on the idea of *laïcité* as a

doctrine of separation between the State and the Church, it points to the adoption of certain behaviours by the State and citizens in order to preserve the neutrality of the public sphere, the equality among citizens and the universal civic education in schools.

Despite the fact that this tradition has contact points with the liberal idea of tolerance, it is still distinctively republican in its basis and reasoning.

The idea of tolerance does not fit in the republican reasoning, but is based on the liberal principals of Locke and his idea of natural and inalienable rights of Man. On the contrary, although apparently facing the same end, the republican tradition takes from the idea of 'civil religion', introduced by Rousseau, to designate the civil profession of faith modelled by the ancient civil religions (Zurbuchen, 2002: 47). This orientation goes back to Maquiavel that saw religion as essential to keep and reinforce the patriotic love, fight private passions and this way guarantee the stability of the republic. His inspiration, born from the study of History and present on his comments to "The Last Decade of Tito Livio", invokes ancient Rome in its republican period, where religion, based on his interpretation, helped promote the civic grandness and the virtue of citizens ( Skinner, 1981: 61-64) . Religion (whichever one) is then valued with the purpose of reinforcing "virtue". Maquiavel defends the ancient Roman religion to be more effective for this purpose than Christianity of his time. From "civil religion" as a factor of unity and cohesion of the republic and growth factor of civic virtue, easily arises the need to impose, through the state, certain behaviours and prohibit others in order to guarantee the "republicanisation" of faith and beliefs.

Different from this is the Anglo-saxonic understanding of the separation of the Church from the State doctrine, and the construction of religious freedom itself. In the North American constitutional tradition, for example, the freedom of conscience is seen with prominence when compared with religious freedom, being the latter under the first. In such a way that only under particularly serious reasons is the imposing of limits or prohibitions regarding the religious freedom justified. Pulling away from the idea of "civil religion" defended by the French republican tradition, some of the North American founding fathers such as Thomas Paine, James Madison or Thomas Jefferson focus on the context of fundamental rights the sacred sphere of religious freedom that is out and should stay apart of any public-state intervention. The religious pluralism, which consists in the defence of freedom of conscience, in the total freedom of cult and belief in the centre of society and in the abstention of public powers (either through prohibitions or supports), constitute the distinctive mark of the North American tradition. Under this understanding is a fear for factions and religious cults, potentially destabilizing of the growing republic. Only absolute religious freedom and diversity can guarantee the common good. And this is also a distinctive republican tradition; eventually a modern republicanism as identified by some authors (Kalyvas & Katznelson, 2008: 105-114) but also apart from the French model.

The North American Constitution (art. VI, Amendment I and Amendment XIV) consecrates the principals of freedom of religion (free exercise clause) and of separation of Church and State (establishment clause). On the other hand, the Supreme Court interprets the constitutional

norms and principals by widening the scope of freedom of religion and supporting the doctrine of the " wall of separation "(Thomas Jefferson) between State and Church.

The fact that the same political tradition, as the republican tradition, gives place to different judicial solutions (legally or jurisprudential) for similar problems (although in different countries) should make us question the basis, the relevance and the limits of the referred tradition.

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