

RELIGION IN PUBLIC PORTUGUESE EDUCATION

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I GENERAL BACKGROUND

1. Facts and Figures

It is estimated that about 10,600,000 people¹ live in Portugal (51.7% female, 48.3% male). Demographical searches show **four main trends**:

- (a) An increasing longevity (life expectancy at birth has risen to 75.5 for males and 81.7 for females),
- (b) A decreasing birth rate, as the total fertility rate is around 1.49 children born/woman,
- (c) A significative flow of immigrants which to avoid a population decrease² (106,294 Brazilians, 53,494 Ukrainians, 14,053 Moldovians, 19,155 Romanians, 10,448 Chinese, 5,114 Russians and 4,104 Bulgarians) as well as many people from ancient Portuguese colonies in Africa and Asia: Angola (27,619), Mozambique (5,681), Guinea-Bissao (24,391), Cape Verde (51,353), Saint Thomas and Prince (10,627). Many people from Eastern Timor, Macao and the former Portuguese State of India – Goa, Damao and Diu – have dual citizenship,³ and others are obtaining naturalization (in 2008, 9,926 Cape Verdeans, 8,391 Brazilians, 4,589 British, 4,463 Angolans and 4,449 Moldavians).
- (d) A very different age structure with just 16.5% of people 0-14 years and 17.3% over 65 years old.

In 2007, there were 1,670,763 students,⁴ including:

- 247,826 children in nurseries
- 469,831 in 1st cycle
- 240,199 in 2nd cycle
- 375,978 in 3rd cycle
- 336,929 in secondary schools

The religious map of Portugal shows a majority of Catholics across the country. Other denominations are mostly centred in Lisbon and there are very small communities of Jews («marranos», descendants from those who resisted expulsion as an alternative to forced conversion in the early sixteenth century). Some English families settled in Oporto and

¹ All these figures are from MARIA JOÃO ROSA/PAULO CHITAS, **Portugal em Números** (2010) Lisboa

² Between 1993 and 2008, demographical growth is due to immigration, and births overlap deaths by just 100,000, which means an average of 6,000 births p.a. over the death rate, MARIA JOÃO ROSA (2010), p. 13.

³ Only legal foreign residents (2008), according to the FOREIGN AND FRONTIERS SERVICE, reach 4.1% of the population.

⁴ www.min-edu.pt.

Madeira for business reasons; these explain the presence of traditional Anglican communities. In other coastal cities some protestant communities were set up during the nineteenth century, and these were to survive their founders (Figueira da Foz, Aveiro, Setúbal, Faro).

The number of Catholics did not decrease between the first modern census (1900) and the latest one (2001). However, the Catholic average is much smaller.

Roman Catholics, of those who answered this optional question in 2001, were around 7.4 million (84.5%) but growth has been slow as to those who declared themselves non-believers or even atheists (225,234 in 1991, 342,987 in 2001). Forms of Eastern Orthodoxy went up from 2,564 in 1981, to 11,319, in 1991, and 17,443, in 2001. Other Christian numbers rose from 116,423 in 1991, to 171,046 ten years later. Those who declared themselves Muslims were 9,134 in 1991 and 12,014 in 2001. Hindus are about 5,000, Buddhists, some 8,000. The Jewish population is decreasing: 3,519 in 1991, and just 1,773 ten years later.

Those who did not answer or did not choose any religious profile were 1,476,748 in 1991, but no more than 786,822, in 2001.

As in other countries, those who simply declare themselves Roman Catholics are much more numerous than those attending mass every Sunday and other holy festivals (about 20%, with much more weekly attendance in the north than in the south). Large crowds in Fatima do not evidence any regular commitment. In fact, many of them do not attend church. This gap is not as high as other religious groups and I guess there is no gap at all as to non-believers.

Nevertheless, more than half of marriages, every year, are Catholic which is remarkable considering that a second Catholic marriage is allowed only for widows and for those who obtain a marriage annulment in the ecclesiastical courts.

2. General school system

The Portuguese Constitution, the original text of which is from 1976, ensures freedom of learning and teaching (art. 43, par. 1) as well as the right to open private and social (cooperative) schools (par. 4). On the other hand, on public policies and cultural rights, art. 74 proclaims equality in educational opportunities for all, what includes the public task of providing a basic compulsory education which is free and for everybody (par. 2, a)) and, moreover, the Government must «create a network of public schools to meet the needs of the whole population» (art. 75, par. 1), although it also recognizes and supervises private and social education (par. 2).

A nine-year basic education is mandatory for everyone under 18; it has three cycles:

- 1st cycle (four levels) – 6 to 10 years old

This aims to develop oral language and a progressive mastery of reading and writing, to attain basic concepts in arithmetic and calculation, to understand the physical and social environment, and to practise arts, drama, music and sports.

- 2nd cycle (two levels) – 11 to 12 years old

This seeks to train pupils in the humanities, arts, sports, science, and ethical and civic education, in order to enable children to acquire and interpret information in a creative and critical way.

- 3rd cycle (three levels) – 13 to 15 years old

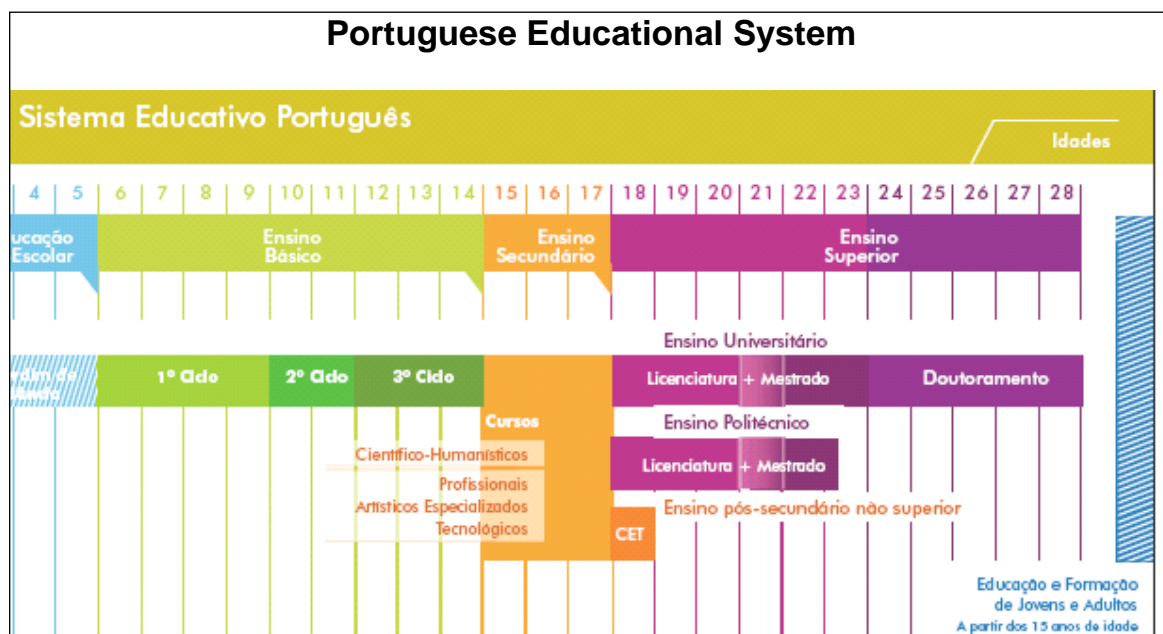
This aims at giving a systematic understanding of modern culture and at training children, on one hand, for work, and, on the other hand, for higher studies.

Secondary or high school (on three levels) seeks to prepare students for universities or for jobs, according to their skills.

At the age of 15, students must choose one of four branches,⁵ alongside general courses in the Portuguese language, philosophy, one foreign language, physical education and facultative moral and religious education. There had been a plan to establish a subject on personal and social development for those who do not attend religious classes. The fact is that this subject is not available.

There are also occasional programmes offered by vocational schools and a programme called ‘new chances’ with single unit designed not to complete cycles but to give a second opportunity for those who did not undertake training at the normal age or left school early.

At all levels there are a small number of specific schools to learn the arts (painting and sculpture, music, theatre).



3. Numbers of private and public schools

The religious orders have lost much of the dominant role they had in education since the dawn of independence as well as through the Portuguese missions in India, Japan, Tibet, South America and Africa.

⁵ (A) Sciences and Technologies; (B) Social and Human Sciences; (C) Socio-Economic Sciences; (D) Visual Arts.

Throughout the nineteenth century efforts were made to open a network of secondary public schools ('liceus') in major cities as an essential part of the political programme of constitutionalism.

Although compulsory since 1835, primary education was still largely entrusted to clergy. In 1878, three quarters of people were still illiterate (many more in the countryside than in town, many more in the south – about 80% – than in the north – about 45%).

However, there was a huge improvement in the second half of the nineteenth century.⁶ At the end of the reign of Mary II (1853), there was a school for every 1685 inhabitants and for every 40 kilometres.² Midway through the reign of his grandson, Charles I in 1899, there was a school for every 890 inhabitants and every 15 kilometres.²

This trend suffered a blow with the proclamation of the Republic (5/10/1910), for whose political leaders, ironically, the extension of education was a key objective. By closing convents and monasteries, the government wasted something it did not itself have to offer: schools and teachers.

The enrolment rate, after rising from 22% to 29% in the last ten years of the monarchy, stalled around 1920 (at 30%) – but in the same year adult illiteracy still affected 2 / 3 of the population.

Between 1911 and 1917 the high schools set up in major cities increased their number of students from 10,640 to 11,827.

This trend weakened thereafter and would not recover until after 1960.

But in 2007,⁷ there were 12,510 schools (19.5% of them, private) for 1,670,763 students.

The constitution (art. 43, par. 4) assures freedom for private schools on all levels,⁸ but no public grants are provided, other than in the case of small towns and villages which have no public schools.

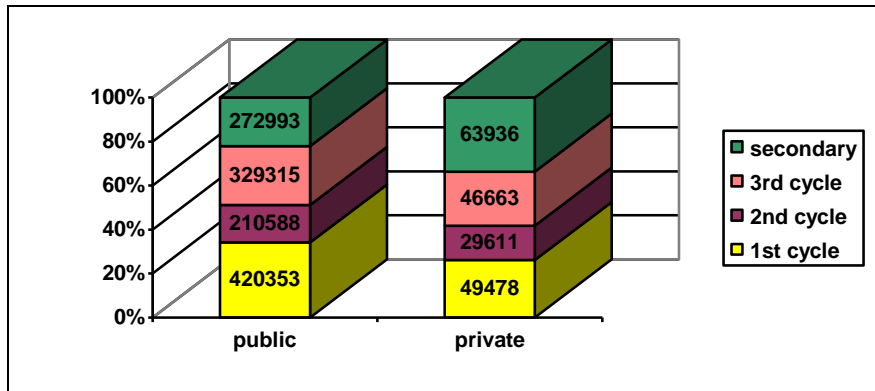
The many Catholic schools (above 200) are much sought after by families as they are prestigious institutions. Every year, national figures for student marks to enter universities are compared. Many Catholic schools are at the top of the rankings.

As we can see from the following table, the number of students in private schools is larger in relation to the higher levels of the education system:

⁶ RUI RAMOS et al., **História de Portugal**, (2010), Lisboa, p. 529.

⁷ www.min-edu.pt

⁸ «The right to establish private and cooperative schools is safeguarded»; see also art. 75 (2): «The State recognizes and supervises private and cooperative education, in accordance with law».



2006/2007 – Planning and Studies Office – Ministry of Education

The reason for this is because parents rely much more on private schools to ensure that their children gain entrance to universities.

II RELIGION AS A SUBJECT AND ITS SUBSTITUTES

1. Confessional teaching

As already mentioned, classes in moral and religious education is an option for parents or students themselves if they are 16 years old. Churches are free to programme classes and to select their own teachers who are paid by the State.

More than 460,502 students in public schools chose in 2009/2010 to attend moral and religious education:⁹

Basic education – 442,292 students (57.6%)

Secondary education – 18,210 students (2.4%)

The figures for 2008/09 were different with many more students at the highest levels:

Basic education – 60.47%

Secondary education – 10.2%

All public schools should provide for Religious and Moral Catholic Education. Other churches or religious groups may provide this if a minimum of 10 students are enrolled.

Muslims do not seem particularly interested in confessional classes inside public schools. The mosque seems to be the more appropriate forum in which to learn the Koran. According to latest official figures, only some Evangelical churches and one Baha'i community exercised this right to provide confessional education in public schools. Evangelical classes are attended by nearly 2,500 students.

This was not always the case. We must take two steps back in history to understand the contemporary position of religious freedom. The abolition of the constitutional monarchy in 1910 brought an end to the confessional state. The Republic recognized equal rights for religious minorities – Jews and Protestants – but triggered a wave of measures hostile to Catholics. The republican programme was not constrained to build a neutral State. It sought a

⁹ Educational Statistics Department, Ministry of Education.

secular society, and did not disguise its aim of eradicating Portuguese Catholicism for generations to come.

Church properties were confiscated. Most of them have not been returned since. Religious orders were abolished. Schools suffered a major blow, especially with the expulsion of the Jesuits who provided high quality schooling.

The persecution of many priests was violent, resulting in the death of some.¹⁰



The Separation Act (20/4/1911) established a body in each parish to control worship, heavily restricting freedom of speech for bishops and priests. Terrorist groups, which the police and government pretended not to see, often attacked Catholic newsrooms. Diplomatic relations with the Holy See were broken. The Great War allowed for some relaxation and slowed down the persecution of Catholics who identified with the monarchy and Spanish interests.

The authoritarian regime, which began on 28 May 1926 with the so-called Telegraph Revolution, seemed unavoidable for many, when public finances, political parties and the people showed themselves exhausted. The mainstream view was not to restore either Manuel II (1889-1932) to throne or Catholic rule. The motto was to restore order and national greatness. The new regime raised the most fatal ambition of republicans: to save too vast a colonial empire for too long. In order to achieve sympathy with the Catholic majority, there began a slow process of reconciliation with Rome.

Nevertheless, the government forbade the ringing of bells to celebrate the Lateran Accords in 1929. Salazar, then Finance Minister, was not overly concerned. He knew that his time was yet to come.

The short-lived military dictatorship (1926-1932) was backed by civilians and was followed by a long civil dictatorship backed by the military (1932-1974).

The Constitution of the Estado Novo (1933), which had a nationalist character, kept the separation between church and state, but little by little Portugal informally adopted the Catholic religion not as its official religion but as a healthy national tradition.

Moral and Civic Education classes were introduced as mandatory in all cycles of education.¹¹ However, the subject programme lacked the backing of the Minister of National

¹⁰ In prison, Jesuits heads, ears and noses were carefully measured, because it was considered that followers of St. Ignatius of Loyola had some specific anthropometric characteristics. See the cover photo of ANTÓNIO ARAÚJO, **Jesuítas e Antijesuítas** (2004), Lisbon.

¹¹ Decree Law 27 084, on the 14th October, 1936.

Education. From his reading of the programme, its purpose was to identify Christianity with the supreme national values of the leader. One of the aims of the programme for the 3rd year could not be clearer: *“The need to transform stubbornness or obstinacy (...) in the habit of keeping quiet while the actions taken seem reasonable, and to accuse him of the habit dispassionately hearing the opinions of others and following faithfully the determinations of others even when opposed to their opinion, as became of him who provided it with authority.”*

Criticising public policies created a problem of conscience for several Catholics. Indeed, criticism was seen as political opposition and this as disloyalty both to God and Salazar.

The Concordat signed at the Vatican City in 1940, when Portugal, protected from World War II, celebrated 800 years of national independence, provided as regards religious instruction: “Teaching will be the teaching of Catholic religion and morality in public schools, elementary, middle and complementary, to students whose parents, or those in their place, have not made application for an exemption.” (Article XXI).

So as not to offend the radical republicans Salazar neither revoked the 1911 Separation Act nor removed the equal status accorded to religious minorities. These groups were increasing but they were grateful to the Government. In fact, thousands of European Jews found in Lisbon a safe haven during World War II. Nevertheless, most of them only stayed long enough to cross the Atlantic.

Catholic opposition was hostage to a government that could prevent the nomination of bishops. Only the exile in 1959 of the Bishop of Oporto, D. Antonio Ferreira Gomes (1906-85), and the winds blowing from Vatican II (1963-1965), aroused a collective critical consciousness which sought religious freedom.

Marcello Caetano, Salazar's successor (1968-1974) also adopted a Law on Religious Freedom in 1971.¹² Although in some respects it was a balanced piece of legislation, it did not allow teaching of other religions in public schools; moreover, recognition of new denominations was dependent on them being compatible with the fundamental principles of constitutional order and the interests of Portuguese sovereignty (VIII). These led to conflicts with protestant missionaries who denounced the atrocities committed in the Colonial War (1961-1974) and with some Catholic bishops who, with the tacit support of Pope Paul VI, favoured the formation of a local clergy in Africa.

How did this law survive the return of democracy until 2001?

The democratic regime which was consolidated in 1976, after a troubled period of revolutionary Marxist hegemony, protected a rather ambiguous statu quo. No democratic parties wanted a return of the religious position of 1911 - this would have led to a civil war pitting the south against the north and the central districts with the islands (Azores and Madeira), where Catholicism has always had deeper roots in cultural and social life.

The effect was to benefit the Catholic Church in the best of both worlds: retaining some privileges of the authoritarian regime without the counterparts that dictatorship demanded.

¹² Law 4/71, the 21th August.

For more than twenty years, almost everybody agreed on enlarging rights and freedoms to other religious groups. Two major factors discouraged this. The first was quite simple. Political parties were sure that a new statute law would not benefit them electorally. The second was the fear of powerful and suspicious evangelical groups arriving from Brazil.

As is well-noted by JORGE MIRANDA,¹³ religious discrimination resulted primarily from a failure of the legislature. Freedom should be built not on the impoverishment of Catholic freedom, but on the status of other churches and religious groups (with increasing numbers of Protestants, Hindus and Muslims, most of them having left former Portuguese colonies).

In any case, specific rules would have to be designed as the forms of worship, beliefs and traditions of each religion are quite different. Churches cannot be viewed as football teams or political parties.¹⁴ Specific rules were needed but not privileges. No special rules can be accepted on individual rights and guarantees, but rights relating to cooperation between State and Churches¹⁵ do not have to be the same. Equality does not mean uniformity.

Only the entry into force of the Religious Freedom Act (2001) and the new Concordat with the Holy See (2004) met the constitutional design of religious freedom for all.

It is interesting to note that during this period (1976-2004) the very few issues that exercised the Constitutional Court concerned religious and moral education.

The opt-out clause for those not wishing Catholic Education classes remained.¹⁶ In Judgment No. 423/87, the Court overturned the rule that required parents or students to make an express declaration of non-attendance. Later, in Judgment No. 174/93, Court accepted that classes in Catholic Religious and Moral Education could be taught by the classroom teacher himself. It would appear that the separation principle does not go so far as to separate teachers from religion. It seemed to be legitimate, in the light of constitutional norms, that the same teacher has a dual representation.

Religious and Moral Education is now treated in the following acts:

- Decree-Law No. 323/83, of July 5, which implements the Concordat. State and municipalities must ensure the provision of Catholic Religious and Moral Education classes at all levels of education, allowing the Portuguese Episcopal Conference to approve programmes and textbooks and reserving to each bishop the hiring of teachers. These "are part of the faculty of the schools where they work, enjoying the rights and duties inherent in their teaching function" (art. 5., Paragraph 2).
- **Basic Law on the Educational System** (Parliamentary Statute 46/1986, 14 October); art. 47, par. 3 of this states that Catholic religion and moral teaching is optional, in

¹³ **Manual de Direito Constitucional**, IV (Direitos Fundamentais), 3ª ed., Coimbra, 2000, p. 427.

¹⁴ See PAULO PULIDO ADRAGÃO, **A Liberdade Religiosa e o Estado**, Coimbra, 2002, p. 444. Against this position, see JÓNATAS MACHADO, **O regime concordatário entre a 'Libertas ecclesiae' e a liberdade religiosa**, Coimbra, 1993, pp. 59 e segs.

¹⁵ On this way, CARLOS BLANCO DE MORAIS, Liberdade religiosa e direito de informação, in **Perspectivas Constitucionais**, II (1997) Coimbra p. 286.

¹⁶ On this issue, ANTÓNIO DUARTE SILVA/JOSÉ DE SOUSA BRITO, *La jurisprudence constitutionnelle en matière de liberté de religion et de croyance*, in **Les aspects juridiques de la liberté confessionnelle**, Conférence Internationale, (2008) Ljubljana, pp. 204.

accordance with the constitutional principles of separation between public powers and churches and of non-denominational public education.

- Ordinance No. 333/86 of 2 July, which takes care of the particularities of religious education in the 1st Cycle, and allows the class teacher himself to teach the subject (for children who have asked for it). In any event, teachers should develop good cooperation and work together on the educational programming of school work.
- Decree No. 831/87 of 16 October, which deals with the preparation of Catholic teachers for the subject.
- Ordinance No. 344-A/88 of May 31, which introduced the need for an explicit statement of the parents to enroll their children in religious classes.
- Decree Law No. 407/89 of 16 November, which provides for a table of teachers of Catholic Religious and Moral Education.
- Order No. 104/89 of 16 November, which authorized experimental classes on Evangelical Religious and Moral Education.
- Joint Order No. 179/97, of July 26, recognizing the qualifications of teachers of Evangelical Education.
- Decree-Law No. 329/98 of 2 November, making definitive enlargement to other denominations, where a school meets the minimum of ten students (art. 6. No, No 1).¹⁷
- **Religious Freedom Act**¹⁸ (Parliamentary Statute 16/2001, 22 June) where religious teaching in public schools is granted for prescribed churches (art. 24, par. 1) but not as an alternative to other subjects (par 2).¹⁹ Programmes, teachers training and class materials must be provided by churches accomplishing general education policies.
- A new **Concordat** between the Portuguese Republic and the Holy See, signed on the 18th May, 2004; art. 19 of this provides: «The Portuguese Republic, within the religious freedom framework and the task of cooperation with parents on their children's education, ensures the proper conditions to provide, in accordance with Portuguese law, Catholic religion and moral teaching in non-superior public schools, with[out] any kind of discrimination» (par. 1).

At a glance, it would seem a quite good system. Children get free classes on their religion at the very same school they attend each day. Teachers are paid by the Government and school programmes are free of public input. The Government fulfills its constitutional task of assisting parents on their children's education (art. 67, par. 2, c)).

However, there are some significant defects in this system:

¹⁷ The refusal by the Minister of Education may take place only if "the moral guidance and religious education that is intended to minister contravene the law or public order" (art. 3., Paragraph 3).

¹⁸ Whose application to the Catholic Church is residual (art. 58).

¹⁹ It means that a school subject entitled Personal and Social Development (prescribed by former law, but never established) is no more mandatory for those who do not opt for religious classes.

a) Confessional classes, according to the Religious Freedom Act (art. 24, par. 2), do not constitute an alternative to other classes or subjects. Thus, the choice is between some free time in the playground or one more class in the timetable.

b) Religious Education is the poor relation among subjects: classes are scheduled for lunchtime or late afternoon.

c) A minimum of 10 students in each school, as stated on Decree-Law No. 329/98 of 2 November (art 6, par. 1) does give few opportunities to many non-Catholic groups. Protestants, Jews and Muslims are not particularly concentrated in certain areas of cities. Only classes of students from various schools would achieve the minimum number required by law.

2. Religion within the framework of classes

Outside the limited scope available for confessional education (45 minutes weekly), religion is not generally addressed in the curriculum.

Recent research, developed by the Commission for Religious Freedom on basic textbooks,²⁰ reveals religion is presented as something belonging to the past, losing its place inversely to scientific growth: «*In the XIIIth century, people were very religious. Everywhere, at every village, however small it was, there was a chapel, a church or a simple hermitage*»;²¹ or: «*Reason against the oppression of the church – largely responsible for the cultural lag in time (...)*»;²² or, religion has been «*the most responsible for superstition or obscurantism until the eighteenth century*».²³ Huge generalizations are often made. Islam is identified as a whole with Arabic countries: all Muslims are foreigners from Arabic countries and all Arabic peoples are Muslims. One book for children aged 12 states that Iraq is predominantly Sunni, and that women in Islam «*can not go out alone and have virtually no rights*».²⁴

Moreover, in history classes Muslims in Portugal are regarded only as a phenomenon in the distant past (711-1249): the moors left some words on Portuguese language, some buildings and legends. No links are made either to communities who stayed until sixteenth century or to new communities which are growing every year.

Art and music are taught without reference to religious cultural backgrounds, signs and symbols. Many students ignore the real meaning of Christ's Passion even when they listen to Johann Sebastian Bach masterpieces.

Everyone agrees on the importance of teaching Greek or Egyptian mythology. Nevertheless, many of my pupils in university are ignorant about who wrote the Gospels or about the letters of St. Peter and St. Paul. Similarly, when I introduce the concept of human dignity (art. 1, Constitution), they are usually surprised to learn of its roots in the Bible. I ask them to read Matthew, 12:12, and then to work over Pico della Mirandola and Immanuel Kant

²⁰ ESTHER MUCZNIK, **A Religião nos Manuais Escolares**, Comissão da Liberdade Religiosa, Lisboa, 2007.

²¹ MUCZNIK (2007), p. 24.

²² Ibid.

²³ Ibid.

²⁴ p. 28

texts. To their minds Christianity has created only old churches, old priests and old fashioned sexual restrictions.

Prejudice pertains mostly to Catholicism and Islam. At public schools, a child who is religious would probably feel a 'nerd'.

Logical arguments about God's existence are scarcely discussed in philosophy classes. Students are led to think that links between faith and science have been finally broken with Comte and Darwin.

The Bible and the Koran are never read in public schools, in spite of interest in literature studies.

The 1976 Constitution forbids the Government to plan education and culture in accordance with philosophical, aesthetic, political, ideological or religious guidelines,²⁵ and provides for a non-denominational public school system.²⁶ However, it does not delete philosophy, politics or religion from classrooms.

3. Instruction about religions

As confessional classes are optional, the central religious issues are absent from general studies – this represents a significant gap in the educational system.

On this matter, Mário Soares, former Chief of State, and since 2007 Chairman of the Religious Freedom Commission, asked Government in 2009 to devote a part of Civic Studies classes and textbooks to religious issues – Religion in Societies. This was not intended to support this or that church, but to give children some keys to understand religious facts and to be aware of religion's role on History, Arts, Philosophy and Ethics.

The former Minister for Education gave her agreement and some Commission members – forming a small committee – wrote guidelines for 12 classes for 8th level children. We are still waiting for implementation of this.

III COMPORTEMENT RELIGIEUX DANS LES ÉCOLES PUBLIQUES

1. Religion dans le cadre des conditions de travail des professeurs et d'autres employés

Après le Décret-loi 407/89, les enseignants d'éducation religieuse ont acquis les mêmes droits que les autres professeurs. Toutefois, l'évêque peut licencier sans cause civil ces travailleurs. La motivation est de droit canonique.

La principale objection des enseignants de l'éducation morale et religieuse a été une norme contre la nouvelle Loi sur la liberté religieuse (Loi 16/2001, le 22 juin, art. 24, 3) les empêchant d'enseigner d'autres sujets à ces étudiants, en raison de la séparation.

La plupart sont catholiques a qui cette loi ne s'applique pas (article 58) à moins que le Concordat ne prévoit rien. Tel non est le cas.

²⁵ art. 43 (2).

²⁶ art. 43 (3).

Le 8 juin 2009, le ministère de l'Éducation a expliqué que ces enseignants sont soumis à des règles générales sur les horaires scolaires. Toutefois, leur durée hebdomadaire doit être adressée à l'éducation morale et religieuse. Ce n'est que si les heures qui restent à attribuer l'enseignement d'autres matières. En fait, si pas le cas, l'école doit recruter deux professeurs inutilement pour enseigner morale et l'éducation religieuse.

Comme tous les autres travailleurs publics, les professeurs et d'autres employés des écoles ont le droit de suspendre les travaux le jour de repos hebdomadaire et à d'autres moments prescrits par leur religion, à condition qu'ils travaillent dans des horaires flexibles et compensent entièrement leur période de travail (article 14, 1, de la loi 16/2001).

Est recommandée aux services des écoles de défendre les juifs et les adventistes d'enseigner le vendredi soir et le samedi. Cependant, il y a parfois l'opposition d'autres enseignants et instituteurs lesquels voient ce droit comme un privilège pour gagner un *weekend* plus large.

2. Symboles religieux dans les écoles

La Loi 1941 du 11 avril 1936, avait renvoyé le crucifix dans les classes de l'école primaire (aujourd'hui, le premier cycle de l'éducation de base).

Il était temps de chercher la réconciliation avec l'État tout après la discrimination dure contre les catholiques sous la Première République. Ainsi, il a été déterminé dans la Base XIV: « Dans toutes les écoles publiques primaires et élémentaires, là, derrière et au-dessus président de l'enseignant, il y a un crucifix comme un symbole de l'éducation chrétienne donnée par la Constitution. Le crucifix sera acheté et placée dans la façon dont le ministère de l'Éducation National déterminer. »



Le crucifix est resté seul, dans quelques classes, après la chute, en 1974, de l'ancien régime

Aujourd'hui le crucifix n'est que dans certaines salles de classe. Ce n'est que, en 1999, la question a été soulevée en public par des groupes organisés en faveur de la laïcité. Le Médiateur de la République (Provedor de Justiça) a connu quelques plaintes, ce qui a suggéré aux autorités publiques une solution équilibrée et raisonnable: les écoles primaires rares qui conservent les symboles religieux, qu'ils seraient tenus jusqu'à se poser l'opposition des enseignants, des parents ou des élèves.

Tout après l'arrêt Lautsi, en 2009, de la Cour Européenne de Strasbourg, la question a été soulevée à nouveau par des mouvements athéistes radicaux.

De l'autre côté, il y avait une pétition au Parlement pour permettre non seulement le crucifix que l'affichage de symboles d'autres religions dans les écoles publiques.²⁷

Toutefois, l'argument de la matrice culturelle de la croix, au-delà du symbole purement religieux, n'avait pas été utilisé dans la discussion.

Certains préconisent qu'enlever les crucifix de les salles de classe, devrait s'accompagner d'un soutien aux parents au libre choix des écoles religieuses.²⁸ En effet, si la Constitution oblige l'État à coopérer avec les parents dans l'éducation de leurs enfants (art. 67, par. 2 c)), cette tâche ne peut se limiter à une école où Dieu est exclu.

La controverse est au bout. À Madère, le président du gouvernement régional, par l'ordonnance n ° 17/2010, du 21 juillet, a déterminé la présence de crucifix en toutes les salles de classe. Il est intéressant de citer une partie de l'exposé des motifs:



(Drapeau officielle de la Région Autonome de Madère)

«Considérant que la Région Autonome de Madère ne doit pas cautionner ce qui est appelé la euro-sclérose, marquée par une attaque sur les valeurs qui soutiennent la civilisation européenne, lequel est également une conséquence de l'actuel-soi-disant post-modernisme,

Considérant qu'il n'est pas possible aux termes de la réalité culturelle et leur pédagogie scolaires nécessaires, de concevoir l'Europe et le Portugal sans les fondements du christianisme,

Considérant qu'à cet effet, la laïcité de l'État n'est en aucun cas lésée par la présence du crucifix dans les écoles et au contraire, l'État doit fixer un point de vue propre à l'origine de la civilisation des peuples (...),

Considérant que le crucifix en particulier, ne représente pas seulement l'Église catholique, mais tous les cultes fondés sur la même racine qu'a formée la civilisation européenne,

Il n'y a donc aucune raison pour le retrait des crucifix dans les écoles.»

Tout de suite, il y a été déposé une plainte au Médiateur. Il peut saisir la Cour Constitutionnelle et, donc, demander l'invalidation avec force générale de ces normes de Madère parce que contraires à la neutralité religieuse de l'enseignement public (art. 43).

²⁷ Diário de Notícias, 28/9/2010.

²⁸ Mário Pinto, in www.liberdade-educacao.org/republicae (19/12/2005).

3. *Habits religieux*

Le port de vêtements religieux ne soulève pas de questions controversées au Portugal, au moins ils ont atteint les tribunaux, les autres organes de protection des droits et libertés obliques ou les médias.

Un rabin comme un prêtre sont pleinement libres d'entrer et sortir des écoles publiques avec ses habits religieux.

L'usage du foulard par des filles musulmanes n'est pas un vrai problème dans les écoles portugaises. L'usage de *kippah* comme des croix est pacifique.²⁹

4. *Possibilité de bénir des bâtiments écoliers*

Le ministère de l'Éducation a récemment nié avoir empêché les écoles de l'adoption de nouveaux noms de nature religieuse, y compris le nom de saints, très enracinée dans le centre, nord et îles. Il semble être un recul positif.

De nombreuses personnalités de premier plan dans l'histoire du Portugal, que les écrivains, musiciens, ou les dirigeants militaires ont également été des hommes en vue de sa foi.³⁰ Mettre en place un indice serait comme supprimer des musées les objets d'art sacré, à cause de la 'nuisance' religieuse de l'espace public.

À nombreuses cérémonies publiques, telles que l'inauguration des travaux publics, le lancement des nouveaux avions ou des navires a été traditionnellement la présence d'un dignitaire ecclésiastique catholique, qui prononçait une prière et donnait la bénédiction, selon le rite lui-même. Les catholiques se signaient, tandis que les autres ont été confinés à témoin.

Par tradition, le Patriarche de Lisbonne (cardinal et Prince de l'Église) et, par rarement, l'Archevêque Primat de Braga, avaient pris part à des événements publics plus importants: les commémorations officielles de dates historiques, la prise de possession du président ou des gouvernements.

La présence de représentants d'autres religions a commencé à prendre place dans les quinze dernières années. C'était le cas de l'ouverture solennelle de l'Expo 1998 et de plusieurs célébrations à propos des découvertes maritimes au XV^e au XVI^e siècles.

Toutefois, la loi 40/2006 du 25 août, a éradiqué les dignitaires ecclésiastiques de son rôle au protocole officiel. Maintenant seul le nonce apostolique, en qualité de doyen du corps diplomatique, est représentée (art. 36, 1).

Les autorités civiles et militaires n'ont plus le devoir d'inviter les représentants des églises. Ils peuvent, toutefois, faire cela. Dans ces cas, les prêtres, les rabbins, les imams, les popes ou les pasteurs « reçoivent un traitement approprié à la dignité et la représentativité de leurs

²⁹ Bien plus pacifique que l'usage des téléphones mobiles dans les salles de classe.

³⁰ D. NUNO ÁLVARES PEREIRA, responsable militaire par les victoires de l'armée portugaise sur Castille, en 1385, a été canonisé par Benoît XVI l'année dernière. PÈRE ANTÓNIO VIEIRA, jésuite du XVII^e siècle (1608-1697), défenseur des indiens du Brésil, a été considéré le *Prince de la Langue Portugaise* par FERNANDO PESSOA. PÈRE ANTÓNIO ANDRADE(1580-1634), le premier européen au Tibet.

fonctions et ils sont classés en fonction de leur représentation dans la société portugaise » (art. 38, 1).

Est de savoir si le déploiement est d'ordre historique – ce qui donnerait la priorité, après les catholiques aux juifs sur les protestants et musulmans – ou bien sociologique.

Très récemment, le Portugal a signé un accord international³¹ avec l'Imamat Ismaélien. Le Parlement a reconnu leur personnalité juridique internationale (tout comme avec les compositions avec l'Ordre Souverain de Malte). Cela donnera certainement une place entre les agents diplomatiques au représentant de Son Altesse l'Aga Khan et ses successeurs.

Certes, l'ouverture de la plupart des bâtiments publics continue de recevoir le rituel de bénédiction, en particulier les écoles relevant de la gestion municipale. En fait, sont nombreuses les maires considérant qu'il s'agit d'une relation de politesse avec la société pluriel. L'Église répond à l'invitation avec la prière ou la bénédiction, une courtoisie de sa part, mais sans aucune subordination du pouvoir politique aux autorités religieuses, ni aucun risque d'ingérence dans la politique.

5. Sujets spéciaux, tels que: comportement religieux des élèves, professeurs et autres employés, prière publique, prière dans le cadre de leçons ou d'autres événements scolaires, services religieux

La présence des religions dans quelques événements des écoles est autorisée même à cause que les enseignants et les élèves de l'enseignement moral et religieux ne peuvent être confinés aux espaces privés au dehors de l'école.

Les lignes directrices du ministère de l'éducation pour les écoles indiquent que la participation à des pratiques religieuses ou les actes d'adoration se déroulera dans l'espace privé à l'intérieur de l'école. Beaucoup d'écoles disposent d'une chapelle pour les catholiques ou d'une salle de ses propres partagée avec les orthodoxes et avec quelques protestants. Les étudiants ne peuvent pas être lésés par participant. Il y a quelques fêtes à l'école pour Noël et Pâques, qui sont généralement des messes célébrées mais qui peut être un service de culte appartenant à d'autres religions.

En 2004, le Médiateur a suggéré que certaine école ne pas reviennent sur la prestation des qualifications dans l'église locale. Cela sera sans empêcher les élèves et les enseignants catholiques qui, après avoir remis les diplômes, peuvent répondre à l'église ou chapelle pour le rituel de bénédiction.

³¹ Résolution de l'Assemblée de la République 109/2010, du 24 septembre.

IV RENONCIATION AUX OBLIGATIONS SCOLAIRES POUR DES RAISONS RELIGIEUSES

1. *Fêtes religieuses: possibilité et conditions de vacances les jours concernés*

Le Concordat de 2004 prévoit dans l'article 30, sept fêtes catholiques,³² au-delà des dimanches, a qui reconnaît comme fériés nationaux ces jours. Ce n'est que pour se conformer à l'article 3, afin de permettre aux catholiques le respect de leurs devoirs religieux.

Pour les autres religions, la loi 16/2001 du 22 juin, prévoit que les élèves sont tenues de suivre des cours «la journée consacrée au repos et au culte», à condition que leurs églises soient inscrits sur le Registre national des personnes morales religieuses et ont présenté l'année précédente les dates et les heures de précepte religieux (art. 14, 2).

Les vacances trimestrielles, d'une durée de quinze jours, coïncident avec le Noël et Pâques. Ce calendrier n'est pas exclusivement catholique, puisque la plupart des protestants célèbrent Noël et Pâques au même temps. Malgré tout, les fêtes sont prochaines pour les chrétiens orthodoxes qui suivent le calendrier julien ou qui fixent les Pâques comme des juifs.

En ce qui concerne les examens, l'article 14, 3, prévoit que « si la date d'apporter la preuve d'étudiants coïncide avec la journée consacrée au repos ou le culte, telles preuves peuvent être fournies dans le deuxième appel, ou à un jour qui n'est pas soulevé la même objection ».

L'affaire le plus controversé en ce qui concerne les jours sacrés a eu lieu a propos d'une preuve d'entrée au barreau. La candidate était adventiste du septième jour. Appelée à témoigner sur un samedi elle a saisi la cour par un procédé spécial de subpoena pour la défense des droits et libertés personnelles (art 20, 5, Constitution³³). Bien que au-delà de l'école, la décision de la Cour administrative centrale du nord (08.02.2007)³⁴ a appliquée par analogie cette disposition juridique et a eu un rôle très important dans la jurisprudence.

2. *Autres renonciations par motifs religieux*

La renonciation à l'enseignement de la gymnastique ou à l'enseignement de la biologie (à cause de l'évolutionnisme) ne bouleverse, jusqu'à ce moment, la société portugaise. Le même va sur l'enseignement au foyer pour des raisons religieuses.

V RÉFLEXIONS FINALES

La religion s'est confrontée à plusieurs carrefours constitutionnels. Sont des plusieurs carrefours concernant les croyants face l'école comme face d'autres espaces publics.

Le premier défi concerne la liberté de croyance et de religion tout en se situant parmi les droits négatifs. En prenant cette liberté tout comme une liberté publique, un droit de défense, on perd de vue les devoirs de protection que l'État a devant les croyants: fournir bonnes

³² Nouvelle Année et Mère de Dieu, Vendredi Saint, Corps de Dieu, Assomption de la Bienheureuse Vierge Marie aux Cieux, Toussaint, Immaculée Conception de la Vierge Marie, Noël.

³³ Et article 109 du Code de Contentieux administratif.

³⁴ Proc. 1394/06, www.dgsi.pt

conditions pour que ces qui sont croyants peuvent pratiquer leur foi librement et confortablement.

Le second problème c'est le fondamentalisme sur la séparation. L'État est séparé des églises de manière à garantir dans ses choix politiques la neutralité et l'impartialité face à des plusieurs visions sacrées du monde. Cependant, la séparation est bien aussi une garantie de la liberté religieuse. Ce que la séparation empêche c'est de choisir sans un autre critère que celui de Dieu ou des dieux. La séparation n'oblige pas à décider toujours contre Dieu seulement pour attester de la laïcité. La concordance de Dieu avec César n'est pas nécessairement un péché, ni la preuve d'une erreur.

La séparation c'est de l'État face les églises. Pas face les religions ou les croyants. Le même devrait se produire sur les arts comme sur les sports: L'État encourage les artistes et les athlètes, si bien que il doit s'écarter des courants esthétiques et des clubs de football. Ce fait n'empêche pas des équipes nationales de football ou le soutien public aux films, aux livres ou a de recherches scientifiques films qui se présentent dans les compétitions internationales.

Le troisième carrefour c'est un défi majeur. Bien que le principe d'égalité va statuer un même traitement, les plusieurs religions comme les plusieurs langues sont, par leur propre nature différents. Une loi, celle-là uniforme pour toutes les religions, serait toujours un pas en arrière.

La quatrième question fait beaucoup de bouleversements autour de la laïcité. Un État laïque n'est pas celui qui ignore la religion dans le cadre du développement de la personnalité et de la conscience. L'État qui ne tient pas compte la religion devient l'État ignorant et qui répand l'ignorance parmi ses écoles et ses élèves.

Enfin, la question des majorités religieuses. RONALD DWORKIN,³⁵ en prenant à la lettre l'origine historique de son pays, décrit les droits fondamentaux tels atouts contre la majorité. On peut juger, à tort, que les églises dans chaque pays ne doivent bénéficier d'aucune protection si elles rassemblent la plupart des croyants. Cependant, la liberté religieuse ne peut pas confiner la majorité des croyants à un statut subalterne.

Être catholique au Portugal, maintenant, est difficile, parfois, en particulier aux espaces publics, comme l'école. On voit les catholiques d'aujourd'hui comme une épave du passé, sans penser à son propre, sans autre conscience que cette en résultant des écrits des papes. Comme si l'Église empêcherait chacun de penser et d'agir, les catholiques seraient comme des automates ou personnages formant des chœurs de la tragédie grecque.

Ce préjugé dans l'école publique va de même avec la méfiance sur l'Islam ou le traitement du judaïsme comme un bric-à-brac. L'apport de la religion au cœur de l'école publique, comme condition de pleine liberté, présuppose qu'on regarde la foi des hommes rationnellement.

³⁵ **Taking rights seriously**, Londres, 1977, p. 194.