

— Dissertation : « Le déclin de la loi » —

« La loi statue sur tous : elle considère les hommes en masse, jamais comme particuliers » nous explique Jean-Etienne-Marie Portalis, avocat, homme d'État et philosophe du droit français du 18^e siècle. Inséré dans le discours préliminaire du Code civil, dont Portalis en est un des rédacteurs, ce dernier appuie dans sa citation sur le caractère général de la loi, qui se « doit d'être la même pour tous. » (Article 6 de la Déclaration des Droits de l'Homme et du Citoyen). Il précise bien qu'elle ne doit en aucun cas se mêler des problématiques individuelles de chaque citoyen, mais bien d'établir une loi générale qui couvre des situations plus vastes.

Si l'on compare notre système législatif français à celui des États-Unis, on constate une grande divergence quant au champ d'application de la loi. En effet, en France, une loi couvre l'ensemble du territoire national, alors que de l'autre côté de l'Atlantique, il y a certes des lois fédérales, qui régissent tous les états, mais chaque état, à son niveau, peut se doter de sa propre législation.

La loi est un terme polysémique. En effet, qu'est-ce que la loi ? Tout le monde semble le savoir, mais qu'en est-il réellement ? Selon la définition de Dalloz, en son sens strict, celle-ci est « la règle de droit écrite, générale et permanente, adoptée par le Parlement selon la procédure législative et dans le domaine de compétence établis par la Constitution ». Et au sens large du terme, la loi correspond à la « règle de droit édictée, d'origine parlementaire ou non. »

La notion de déclin qui y est associée, elle, fait référence à la fin d'une chose, à sa perte de valeur, ici la loi, après avoir atteint son apogée. C'est une phase de régression et d'affaiblissement.

L'origine de la loi remonte à la Grèce Antique, cependant dans l'objectif de voir ce qui nous concerne, à savoir la phase de déclin de la loi et ses tentatives de résolution, un saut dans le temps est alors indispensable. C'est la période post révolutionnaire qui va nous intéresser dans le sens où c'est à ce moment que les penseurs vont lui vouer un réel culte, notamment avec l'édiction du code civil. Mais c'est suite à ce stade de puissance suprême que la loi va connaître des difficultés la forçant à perdre de son caractère incontestable. La loi étant une notion très vaste, il est également nécessaire de poser une délimitation spatiale à son champ d'application pour pouvoir aborder ce sujet en profondeur. Ainsi, on s'intéressera uniquement à la loi française, qui structure le cadre juridique français.

« La loi est l'expression de la volonté générale ». C'est ce que nous affirme l'article 6 de la Déclaration des Droits de l'Homme et du Citoyen de 1789. Cette idée inspirée de Jean-Jacques Rousseau, veut voir dans la loi une norme suprême, qui provient des représentants élus par le peuple, et en ce sens, elle est l'aboutissement de la pensée de la nation. Mais récemment, on a vu un profond changement de perception quant à la fonction et la nature de la loi. Ou les Lumières y voyaient une norme sacrée, il s'agirait désormais d'un ensemble de textes qui régit la conduite des citoyens.

Cette perte d'éclat s'inscrit dans le contexte actuel de la multiplication des textes de lois, et nous pousse ainsi à comprendre les raisons pour lesquelles la loi est en train de tomber dans l'oubli.

Il paraît alors opportun de se demander : la Loi est-elle vouée à sombrer dans l'indifférence ?

Si on assiste à un déclin indéniable de la loi (I), il semble alors tout à fait envisageable que celle-ci connaisse un renouveau grâce à des solutions (II).

La Loi Et L'autorité Essais T

Cicéron



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