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UNDERSTANDING *LA LAÏCITÉ*

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History and Theory

What France has recognised, which most other countries have not, is that government temporal authority and church supernatural authority must be separate entities in a democracy. The separation between the two authorities should be seen as on a par with the separation of powers of the executive, the judiciary and the legislature within a government.

La laïcité is the political idea that government must be characterised by a neutral playing field where incompatible ideas from atheism to various forms of the supernatural compete, but none are in the ascendancy. In this way government is not anti-religious but even-handed. It is only through such a system of government that the first separation of powers between temporal and supernatural authority can be achieved. As Professor Renaut argues:

> *"Laïcité isn't simply one of the options of modernity, because it is one of its foundations".* [1]

The separation of the powers of executive, judiciary and legislature is also a French idea deriving from the work of the philosopher Montesquieu who first expressed the idea in his *De l'Esprit des Lois* of 1748. [2]

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[1] A. Renaut & A. Touraine, *Un débat sur la laïcité,* Stock, Paris, 2005, p.16.

In 1516 there was a Concordat between the French king François 1st and the pope. This Concordat of Bologne created what is known as gallicanisme, the idea that the king could have temporal authority over the church by the appointment of bishops and abbots. This statement of independence by the French monarchy was one of the first moves away from church authority.

The first realisation of the separation of powers between the temporal authority of government and the supernatural authority of the church occurs with the French Revolution.

But before the Revolution, under the *Ancien Régime*, French society was divided into three « estates » beneath the monarchy. But the monarchy was effectively a clerical state. Clericalism is defined as "the pretension that a church has a place in the political order." [3] The first estate was the king and the clergy. The second estate was the nobility. Together they represented as little as five per cent of the population. The third order was everyone else: 85 per cent peasantry and the remaining 10 per cent the rising, politically disenfranchised, merchant bourgeoisie. The peasantry were locked into what was called *le servage*: they were compelled to work for their *seigneur*, their nobleman, for the course of their lives. Another important fact about these three estates is that, apart from a tax paid by the church to the king, only the third estate paid tax. The monarchy, clergy and nobility lived largely off the taxes paid by the vast majority of the population.

These taxes included *le dîme*, a tax of ten per cent, in money or in kind, usually ten per cent of the harvest, paid by peasants to the church, and *la corvé*, a money tax paid to the nobility and monarchy for the privilege of mobility within the countryside. *Le dîme* was first inaugurated by Pope Pépin le Bref during his reign in the eighth century AD. That is, the church was taking 10 per cent until the French Revolution, about a thousand years. [4] Schiappa notes there were

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2 J-M. Schiappa, *La revolution française, 1789-1799*, Librio, Paris, 2005, p.13.

3 J-M. Ducomte, *La loi de 1905,* Editions Milan, Paris, 2005, p.62.

4 H. Pena-Ruiz, *Histoire de la laïcité,* Gallimard, Paris, 2005, p.29.

many other "numerous and diverse taxes" [5] which echo the innkeeper's lines in *Les Misérables*:

> *Here a little slice*
> *There a little cut*
> *Three per cent for sleeping with the window shut …*

Well, when the majority must pay and the minority do not, that is a prescription for trouble. French authors like Voltaire and Rousseau railed against injustice, intolerance and the notion that private property was the source of inequality.

Ideas can be dangerous. In France, this intellectual culture arguing for political freedom was a catalyst for change. Combined with circumstances, such as those of the 1780s – a bad harvest, shortage of money, arrogant decisions made by the monarchy – matters came to a head. In January 1789 the abbot Siéyès published a document entitled 'What is the Third Estate?' In it, he asked

> *What is the Third Estate? Everything. Until now, where has it been in the political system? Nowhere. What does it want? To be something.* [6]

Another critical idea that occurred during the course of the Revolution came from Talleyrand. He argued that if the clergy has a spiritual mission, it did not need temporal property which could be put at the disposal of the nation which had the consequences of churches being appropriated is some instances. On 2 November 1789 the property of the church was seized by the state, in February 1790 religious orders were suppressed and in July 1790 the clergy was brought under government control. [7] This heavy-handedness should be understood as a reaction to centuries of monarchical and church oppression.

A decree of 1793 made primary education free, secular and compulsory. [8]

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5 Schiappa, Op Cit., p.11ff.

6 Ibid., p.16.

7 Pena-Ruiz, Op. Cit. p.52.

8 G. Chevrier, 'La laïcité: un acquis de l'histoire enjeu de societé', *Cahiers d'histoire,* No.90-91, 2003, p.181.

The positive achievements of the Revolution were undermined when Napoléon became Premier Consul in 1801. Using religion as a distraction from politics a Concordat was reached with the Vatican. The role of the Catholic faith as the majority religion of France was restored but the appointment of bishops was kept in the hands of the state. In 1814 Catholicism became the state religion but in 1833 public education commences undermining the authority of the church.

(An the instructive program shown recently on SBS television in Australia, Secrets of the Inquisition, detailed how Napoléon had the secret files of the 600 year long Inquisition brought from the Vatican to Paris and at one stage, had the Pope arrested.)

In 1881 public education was further developed in France following the work of Jules Ferry who said in 1883:

> *The first goal of the law is to separate School and Church, to assure freedom of conscience for both masters and pupils, to make a distinction between two domains too long confused, that of beliefs, which are personal, free and variable, and that of knowledge, which is common and essential to all.* [9]

In this respect the critical document of the Revolution is The Rights of Man and the Citizen. Article 10 states

> *No one shall be harassed on account of his opinions, including his religious opinions, provided their manifestation does not disturb public order established by law.*

This is the first modern statement of the primacy of conscience.

Rouquette remarks that this idea, the primacy of conscience, was bitterly opposed by the majority of the clergy for it is a point of departure for the idea of secularism. Committed clergy must oppose secularism for to agree to it is to agree to the possibility that their belief system is only one of many, and could be wrong. In other words, as noted, secularism creates the democratic playing field of ideas where an individual is free to choose a faith or a belief.

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[9] Cited in M. Gazsi, *One hundred years of French secularism*, in: *Label France,* No.60 4th Quarter, 2005.

Committed religionists see no point to a debate about this because they are certain they are right. It follows committed religionists are theocrats and not democrats. For example, in one of its own publications referring to the government of the Vatican, it is openly declared that

> *The form of government that rules the State [Vatican] is that of an elected, absolute and theocratic monarchy: it is the Pontiff who exercises legislative, executive and judicial power through delegates…* [10]

The French Legislation

In the 1890s France moved closer to formal separation. The 1894 Dreyfus affair ended any form of compromise with the church which was openly anti-Semitic. In 1901 an Associations Law provided that religious organisations could only exist in France with government authorisation.

After the formal separation of church and state in 1905 the government took responsibility for the upkeep of churches before that date, many of them historical monuments. After that date, the churches would be responsible for their financing of any new churches constructed.

Article 1 of the 1905 law guarantees the free exercise of religion. In this way France relegated religion to the private sphere. Article 2 states that 'The Republic does not recognise, nor funds, nor subsidises any religion.' In principle, the churches are not recognised as public institutions. But Article 2 cannot be taken at face value as there have been qualifications, especially under the Vichy regime, that have to all intents and purposes totally compromised Article 2.

Just over a week ago on 9 December our French colleagues held a meeting at the Great Hall in Paris to hear the results of nationwide surveys into state expenditures in favour of religion, mainly the Catholic supernatural charity. They reported that a staggering 10 billion Euros is paid by the French state, its municipalities, regions and local authorities to the churches in flagrant breach of

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[10] C. Cecilia, *A View of the Vatican,* Edizioni Musei Vaticani, 2001, p.10.

Article 2. This information will undoubtedly be the catalyst for future reform. I will return to this point.

Article 3 socialised all religious property built or acquired before 1905, as mentioned, confirming a law made after the Revolution in 1789.

According to a French author writing in 1989, whose information is clearly wrong, the changes brought about by separation were supposed to be that

> *various forms of state funding of religions were to be abolished.*

ministers of religion were no longer considered to be working for the interests of the state as if they were public servants and their salaries were cut becoming the responsibility of their faith.

parliamentary grants to churches 'disappear from the state's budget.' [11]

The majority religions were considered to be on the same level as any other minority religion, but in the light of this information concerning the huge sums still paid to the Catholic supernatural charity, that is clearly not so.

The cutting of salaries from clergy was supposedly a huge saving for the state. But it was offset by the maintenance of the costs involved in maintaining churches built before 1905. Also, importantly, in the wash, churches remained exempt from income tax and Alsace-Lorraine, the region in the East of France remains exempted from the 1905 legislation.

Subsequently, under Article 4, religious groups are characterized as *associations cultuelles*, associations to further the cause of religion. In principle, they are subject to financial disclosure requirements and they must exist 'for a purpose other than making a profit.' [12] Religious groups apply to their local government, *la commune*, to be recognised as an association. There are around 36,000 *communes* in France. The association can be rejected if their aims are anti-social or they are openly venal in the pursuit of money. If associations are not

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[11] J. Rivero, *Les libertés publiques,* PUF, Paris, 1989, pp187-8.

[12] Rivero, Op. Cit.

recognised they are subject to 60 per cent taxation on their income. Clearly, that qualification can be taken with a grain of salt.

Contrary to most countries France has established the *Mission Interministereille de Lutte Contre Les Sectes* (Inter-ministerial Mission for the Struggle Against Cults) answerable to the Prime Minister. France thus recognises significant human rights abuses are committed by what anglophiles call 'cults' and seeks to do something about them.

With respect to education, a recent report commented that

> *In return for the state funding 80 per cent of the costs, schools run by a religion must teach the national curriculum and cannot bar students because of their faith. Religious instruction must be minimal. There are around 900 such schools in the country.* [13]

The 80 per cent figure here may not be strictly accurate. The Debré law (so called) of 1959 agreed to pay teachers' wages in private schools and ten per cent of their other expenses. These 900 or so religious schools represent approximately 15 per cent of pupils in primary education and 20 per cent in secondary education. [14] There is opposition by French secularists to what they perceive to be the creeping agenda of the churches, particularly with respect to religious education in schools openly contesting the 1905 law. [15] Charity and other laws favouring religious organizations contrary to the purpose of the 1905 legislation have been enacted. [16]

Australia

Australia on the other hand has inherited the legal traditions of the constitutional monarchy of Britain where there is no separation of church and state. Even if some of the drafters of the 1901 Australian Constitution wanted to be even-

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13 C. Field 'France is not as secular as it purports' *New Zealand Herald,* 11 February 2004.

14 *Label France,* Op. Cit.

15 *1905!,* Syllepse, Paris, 2005, p.622.

16 C. Eyschen 'How the 1905 law has been subverted: from the Vichy regime to the Vth Republic', www.iheu.org 13 March 2006.

handed they did not have the French 1905 law before them. They did not recognise the principle importance, as argued above, that all ideas should be treated equally; that a neutral, secular republic with a formal separation of church and state, the first separation of powers, is a prerequisite for democracy. Also, as the French only partly recognized, this principle extends to a complete reconsideration of the property and taxation positions of churches within a democratic state.

The early French willingness to put government interest ahead of church interests and formalise that by law which had the effect, as Lepeix argues of drawing 'the majority of our people out of ignorance', [17] has not characterised any Australian or New Zealand government. The advantage of such a position is that it draws a line in the sand between government and religion politically and in doing so sends a message to the populace about what government, in principle, is for: it is for the common wealth – not church wealth. It also makes the point that in a democracy government decides policy, not the churches. This is a point of view Constitutional Monarchists find unpalatable. Citing a text discussing English republicanism in the Cromwell era, Geoffrey Robertson notes that

> *Empire royalists in the states that were joining together to make Australia insisted that the new country should be described as a 'Federation' rather than a 'Commonwealth' because the latter carried 'revolutionary connotations'.* [18]

I suggest it follows a country and its people must choose between democracy and theocracy. Logically, they cannot have it both ways; but in reality, in most western liberal democracies, they do. While formally distancing themselves from government, the supernatural charities i.e.churches, are subsidised by all taxpayers through income tax exemptions, other tax advantages, straight out government grants of money, and, in the past, land freely given for religious purposes.

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17 R. Lepeix, 'Separation of churches and state. Why is it so important? *NZ Rationalist & Humanist,* Vol. 74, No. 3, 2001.

18 G. Robertson, *The Tyrannicide Brief,* Chatto & Windus, London, 2005, pp357-8.

Supernatural charities then seek to influence government policy by reproducing generations of students at their taxpayer-subsidised elite schools, some of whom go into politics and government. There, some ensure that the system that produced how they think – is not put into question. An interesting Australian exchange on this point occurred between the Secretary of the Federal Catholic Schools Committee, Dr John Farrar, and a journalist in 1969. The journalist raised the question of why non-Catholic taxpayers should pay taxes for what is in effect, indoctrination of children in Catholic schools:

> *Journalist: Indoctrination?*
>
> *Dr Farrar: What was it the communists said? Give me the child until he is seven and I will give you the man?*
>
> *Journalist: It was the Jesuits who said that, Father.*
>
> *Dr Farrar: What is it really?* [19]

The journalist noted that getting caught out like this caused Dr Farrar no embarrassment whatsoever. But the fact that the Secretary of the Federal Catholic Schools Committee could get something so basic so wrong and not be contrite about it, speaks to the culture of his supernatural charity. For the charity it is not a question of right and wrong. It is a question of exercising power over and through government by electoral threat and compliant Catholic-educated politicians and bureaucrats.

Conclusion

To conclude, we taxpayers today are like urban peasants still subsidising the religious in the manner to which they are accustomed. Instead of *la servage* and *le dîme* there are tax exemptions that apply generally. In Australia there are income tax exemptions, capital gains tax exemptions, no income tax on unrelated commercial income, no rates payments on religious property, very generous fringe benefits and so on.

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[19] J. Hallows, 'Heads or Tails?', *The Australian,* 19 June 1969.

The exemption from tax of religious organisations generally mirrors the exemptions of the various monarchies. In 1991 Phillip Hall published his book Royal Fortune: tax, money and the monarchy in Britain. Referring to the monarch's exemption from tax he said 'the very existence of this tax exemption was for as long as possible and until relatively recently kept secret, which demonstrates how little faith monarch and government had in its justification.' [20] He points out that even while the exemption was out of the public view Princess Anne could claim that tax dodgers 'cost people like you and me money … usually it is the most vulnerable who suffer.' [21] Hall calculated in 1991 that it took 'over 26,000 people at work to produce sufficient revenue to maintain the monarchy.' [22] The only reason the British monarchy is now paying token income tax is because of the public's outrage when their tax privileges were detailed in a television exposé based on Hall's book.

For us, the only thing that has changed since the *Ancien Régime* is the faces, the fashions and the taxes. The result is we still pay them for being religious as if that was some kind of entitlement that is rightfully theirs. The monarchy might be gone in France, but elsewhere, the monarchy, the supernatural charities, their functionaries and their tax breaks are still privileged from liberal democratic consolidated revenue. There is no constitutional separation of church and state in most countries. This absence continues to lock in church privileges. The French understood this two hundred years ago but since the Vichy regime especially, they seem to have forgotten it. The fact of the matter is, if you don't have a constitutional separation of church and state, which legally separates the powers of both – realised in practice through tax and charity legislation – you don't have it at all.

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[20] P. Hall, *Royal Fortune: tax, money and the monarchy*, Bloomsbury, London, 1992, p.x.

[21] Ibid., p. xi.

[22] Ibid p.xvi.