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How Liberal can France be? Religion, space, and public order

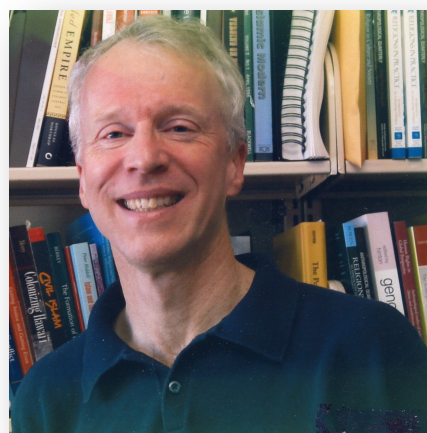
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All French political theory could be seen as revolving around the tension between the principle of guaranteeing individual liberties—the legacy of the Revolution, the Rights of Man and of the Citizen—and the principle of safeguarding the public interest or public moral order. After all, the 1789 Declaration states that “No one shall be disturbed for his opinions, even religious ones, provided that their manifestation does not trouble public order (*ordre public*) as established by law” (article 10), and that “the law is the expression of the general will” (article 6).

The general will then might trump the individual’s opinions. And how do we know the general will? It is somehow public. But in its Old French meanings, ‘public’ pertains to the state or to the people, or it means ‘open to general observation’? Does the state stand for or act for the people? Should public matters—*res publica*—be visible? Should visibility be in the public interest? What is the political status of public space?



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This Foucauldian-sounding set of linkages marks out a space of debates and distinctions that are not at all those of the Anglo-American world. They concern the tension between a liberal strain in French thought, one emphasizing the rights of expression, of association, and of belief and a republican one that links the state, the general will, and visible space, by way of the notion of 'the public'. But shared by people on different points in this space of debate are the ideas that public space is moral space, that preserving its character is essential to preserving the *ordre public*, and that part of that preservation involves a continual policing of its boundaries.

In normative political theory, a number of key authors have made the category of 'public' central to thinking about democracy. In his *Political Liberalism*, John Rawls argued that for liberal democratic societies, public political space must be kept free of what he termed 'comprehensive doctrines', including religious ones-- except insofar as they can be translated into terms available to all others who participate in political life. Jürgen Habermas made a similar argument, except that he allowed for comprehensive doctrines to occupy the 'political public sphere' but not the realm of the 'political arena', i.e., the legislature.

These normative arguments leave out any political arrangements that are not considered by these theorists to be liberal democratic societies. Such societies get to be 'decent societies' insofar as they admit certain rights. This is a problem for those of us who see in states with strongly institutionalized religious references something more than bare "decency", something closer to an attempt to create conditions for reasoned political debate. I have written about this theoretical deficiency regarding Indonesia.

But this normative argument also tends to blind us to how 'liberal democratic societies' actually work, including how they arrive at declarations and decisions on policy. What does public space look like in the *normative conceptions instituted* in those societies? A more anthropological formulation might be: what are the *semiotic limits* imposed on particular spaces in the name of their public character? What am I allowed to signify, and what are the boundaries imposed on legitimate spaces in which I might do my signifying?

The Long view of religion and space in France

The French ideas and practices of governing religion have a long history, of which we will consider two moments. The idea of state control of the bounded, physical church dates roughly from the turn of the 14th century, when the rather bloody king nonetheless called Phillippe le Bel asserted his political control over the physical Church (leaving doctrine to the Pope), and in particular his right to tax the churches. Despite the sharp

changes that occurred thereafter—the Edict of Nantes (1598) allowing the practice of Protestantism, the Revolution of 1789, Napoleon’s Concordat system, and the succession of Empires and Republics—this ‘Gallican church’ model of state regulation has continued to shape French politics, down to President Nicolas Sarkozy’s efforts to control Muslims by creating a single national representative body. Across this long span of time and multiple religions, the governance structure has remained one in which *les cultes*, organized religions, are controlled, and in varying ways supported, by the state. This structure was further inflected by three developments.

One was the development, in the late 18th and early 19th centuries, of a philosophical and political tension between two conceptions of society, both to be found in the writings of Rousseau. The first holds that in public space a general will may emerge and be captured in laws, and that it should not be deflected by intermediary bodies or ‘corporations’. The second is that people are free to associate. Over the course of two centuries this second strain has only gradually asserted itself.

Secondly, during the same time period the sharp conflict between the Church and the Republic led some to see religion as opposed to the public interest, and made more likely an insistence on sharp boundaries between the public, general, state-saturated, on the one hand, and the religious, on the other. These conflicts and boundary-policings were especially acute regarding the public schools, created in the 1880s.

Finally, the domination of Muslim-majority lands by French troops and administrators starting in the 1830s, and the bloody Algerian War that ended in 1962 (but that only recently was acknowledged as a war), left a sense of integration crisis second only to that left by the Franco-Prussian War and its aftermath. Anxieties about national belonging have ever since made Muslims, and Islam, a ‘problem’.

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These historical forces and patterns differentiate French forms of religious tolerance, as a matter of royal regulation of a recognized religion, from those in Britain (and therefrom America), where it was a generalized recognition of freedom of conscience and worship. The object of regulation is not the individual worshipper but the *culte*, the organized religion, with its buildings and its officials. Control was and is defined in spatial terms.

The Battle for the schools

The second important moment came in 1905 and grew out of battles over the control of the schools. The schools became a major battleground between the Republic and the Church for conceptual and historical reasons. Conceptually, schools play the role of socializing individuals into Republican citizens. Historically, they provided the central mechanism to produce citizens over and against cleavages of region and religion. Schoolteachers were the designated agents to make 'peasants into Frenchmen' and to fight against the Church's efforts to control the minds of primary school pupils. From the Jules Ferry reforms in the 1880s to the negotiations with the Vatican in the mid-1920s, the Third Republic succeeded, through a series of decrees, laws, and negotiations, in removing the Church from the public schools *and* in depriving the Church of its public status.

1905 was the crucial year. After a strong set of anti-Church policies, including expelling priests and closing all religious schools, the government passed the 'law of separation of state and religion'. Today this law is celebrated for enshrining *laïcité* or secularity, and for establishing the neutrality of the state with respect to religions, a kind of 'establishment clause'. In fact, the law contains no general philosophies and has become a kind of Rorschach for every author's normative fancy. The word *laïcité* is not used.

What the law does say, after guaranteeing "freedom of conscience and the free exercise of the cultes, subject to restrictions specified below in the interest of *ordre public*" is that the state "neither recognizes, nor pays the salaries of, nor subsidizes any religion." The bulk of the law concerns the church buildings and the objects within. The law stopped state subsidies for priests and churches. The state took direct control of most existing churches, but said that if citizens created private religious associations, they could take over church buildings and properties; if they did not the property would be given to local municipal welfare organizations. This was the liberal dimension of the law. But such associations would have to conform to the rules of each religion—in other words, that the state would pass judgment on their religious correctness. Here, the state reasserted its control.

Everything that happened in a church was now considered public in the sense that it was policed by the state. And it was forbidden to place any "religious sign or emblem" in public places, except for churches, cemeteries, or museums. The law also gave prefects, the state's representatives throughout the country, the right to ban the posting of Church notices in non-Church space, and to ban the ringing of Church bells. (This is why one hears bells constantly in certain parts of France, and not at all in others.)

No religious instruction could now be given in a public school, except for outside of school hours. At the same time anyone preventing a worshipper from worshipping—for example by threatening to fire someone from her or his job—could be imprisoned. All non-*culte* activities were prohibited in churches—although people could create non-religious associations to, say, print religious books or organize youth groups. (This is why there is a sharp distinction in France between religious associations, which may only occupy themselves with religious affairs, and cultural associations, which may do almost anything but religious activities.)

As with French judicial decisions, the reasoning and justifications that shaped the 1905 law are legible only in commentaries and debates, and in particular the responses provided by the major architect of the law, the liberal Aristide Briand. The radical socialist deputy Charles Chabert proposed forbidding priests from wearing priestly garb, on grounds that this clothing signaled a status they no longer had, that wearing it endangered *ordre public* by causing demonstrations, and that it infringed on the human dignity of the priest, who was a captive of the Church: “Of this adversary of modern society, let us, by dressing him like everyone else, make him a partisan of our beliefs, a servant of progress. Of this serf, of this slave, let us make a man!”

His arguments prefigured those made for banning full face-veils in 2010, or indeed in banning headscarves in public schools in 2004: that scarf-wearing schoolgirls disrupted class by forcing the presence of ‘ostentatious’ religious signs; that a woman contravened human dignity and gender equality by the act of wearing a scarf or, *a fortiori*, a burqa; that wearing either made her a captive of Islamists, from whose grasp she needed to be saved. We can almost hear the modern-day Chabert: ‘Of this submissive victim, let us make a French women!’.

To Chabert’s arguments for banning priests from wearing clerical garb, Aristide Briand, the liberal architect of the law, replied that had they included a law banning priestly garb, they would have “run the risk of ridicule, by working by way of a law that claims to have as its primary goal creating in this country a regime of religious liberty, in order to impose upon religious ministers an obligation to change the cut of their vestments.” Precisely the same arguments were made *against* banning Islamic head scarves a century later, and for appeals made to the European Court of Human Rights on the basis of Article 9.

More important for the eventual text of the law were the restrictions on the presence of religious signs in public space. Although he took a relatively liberal position,

“The street and the public square belong to everyone...”

Aristide Briand nonetheless denounced oppressive publicity. “The street and the public square belong to everyone. Why do you claim the right, you Catholics, under a regime of separation, to violate this religious neutrality by exhibiting, in full view of citizens who may not share your beliefs, objects that exalt your faith and symbolize your religion? Is your own conscience capable of being free only so long as it can oppress the conscience of others?”

Note how visibility is assumed to be oppressive. But the law is ambiguous: although Briand clearly had in mind oppression by municipal displays, the law as passed prohibits any “exhibiting” by anyone, and in 1905 this broad interdiction attracted the support of many strong anti-Catholics in Parliament. Today this wording continues to prevent a church, for example, from posting any notices about upcoming church events outside church grounds—although a concert in a church could be considered “in the local public interest” and thus be advertised anywhere, and so forth.

In the years before 1940, when the French governments were weak the Church had a lot of clout. The Vatican refused to accept the terms of the 1905 law, according to which the churches would have become the property of citizens’ associations. The state capitulated, and gave priests and faithful the free use of the churches, and gave the churches to municipalities (*communes*), except for the cathedrals, which remained the property of the state. Churches continued to run private religious schools, and, in 1919 obtained state financing for religious schools that taught the national curriculum. (This remains the case today.)

These measures that were passed between 1905 and 1920 (and much tweaked thereafter) continued the older model of governance, in that they set out the means for the state to *support and control* religious institutions, through laws regulating religious associations, private schools, and the use of religious buildings.

We can see how poorly “separation” characterizes these policy decisions: “defunding, control, eventual support” was the succession of steps taken. Boundaries were policed within a state umbrella. Gradually, for example, priests were no longer allowed to provide catechism instruction in their vestments, and then not in the school building—sometimes in small, separate buildings built on school grounds or just across the road. Similarly, until the 2004 anti-scarf law was passed, some school heads allowed scarves on schools in school but not in the classroom, or not in the building but on the grounds.

Muslims in public space

Let's turn more directly, and briefly, to the policing of the public/private boundaries regarding Muslims and Islam. In the 1920s the French government developed a practical paradigm for marking its status as a "great Muslim power". The state financed a Muslim Institute that had cultural facilities as well as a mosque, and that became the private domain of a public entity so as not to violate the 1905 law. But if the Institute was to be technically a private, French institution for legal reasons, its Mosque had to have a very public, international presence for political ones, and indeed was inaugurated in one fashion or another several times: by a representative of the Moroccan Sultan, by the President of the French Republic, and finally by the ruler of Tunisia.

If France cannot convincingly proclaim itself today a great Muslim power, it does continue to pursue a "control through support" logic that supports simultaneous foreign policy goals of showing support for Islam as a culte, and domestic policy goals of controlling Muslims, with the continued policing of Islamic affairs from the Interior Ministry, the continued espionage in mosques for Friday prayer, and occasional interventions in the name of *ordre public*. When the National Front denounced 'Muslims praying in the street' in the northern neighborhood of La Goutte d'Or, the Interior Ministry closed the mosques for Friday prayer, opened up a former military barracks somewhat nearby, and ordered the two main rival imams (who detest each other) to alternate their weekly roles of sermon-giver. This is not 'separation' but hands-on governance.

The state also has drawn on the ideas present in Briand's speeches, about presenting *laïcité* as a protected social space. President Chirac expressed this idea in his address on religious signs in public schools of December 17th, 2003. He noted that *laïcité* protects the freedom to believe or not to believe, to express and practice one's faith, but also that "it is the privileged site for meeting and exchange, where people find themselves and can best contribute to the national community. It is the neutrality of the public space that permits the peaceful coexistence of different religions."

Now, if *laïcité* defines the character of public space, then it can be cited as the justification for excluding any signs (and not just religious ones) deemed dangerous to free exchange of ideas. But what is meant by "public space"? For Briand in 1905 it was streets, parks, and all state-saturated spaces. The law of 2004 only concerned religious signs in public schools. But the generality and slipperiness of the term has made it easy to move from the policies specified in a law to a broader ban. One sees elected officials claiming that the 2004 law justifies banning women in headscarves from entering city

hall or accompanying children on school field trips, or even eating in university cafeterias.

In 2010, the French parliament passed a law forbidding anyone “in public space, [to] wear clothing meant to cover his/her face.” Public space was given a broad definition, including any space open to general use or controlled by public service. Before its passage, the State Council had rendered its own judgment on such a law, finding it disproportionate to any possible problem and thus in violation of article 9 of the European Convention on Human Rights, but the Constitutional Council affirmed the law’s constitutionality. Their first defense of the law was on grounds that those women who decide to wear a face veil are simply unaware that they “find themselves placed in a situation of exclusion and inferiority clearly incompatible with the constitutional principles of freedom and equality,” an argument that French courts had been developing since 2008. But their second major defence expanded the moral content placed on public space. They said that covering the face in public “misrecognize the minimal requirements of living in society.”

This second justification was new. The Council argued that covering one’s face violated principles of sociability, and that these were part of public moral order, *ordre public*. They argued that *ordre public* included the basic elements of reciprocity needed to live together in society. Burqa wearers threatened sociability, and thus public moral order, when they create a visible boundary between themselves and others. This argument is very weak on jurisprudential grounds, but it echoes long-standing claims about ways in which Muslim “communalism” has hindered full civic participation. Following this particularly French political idea, normal citizens are presumed to be civil; they interact in the “shared life” of civic France. I found the perfect commentator in sociologist Dominique Schnapper, a prime exponent of French Rousseauian principles. In July 2010 she had just stepped down as a member of the Constitutional Council, which meant that she understood their reasoning and could talk about it. I had the good luck of spending two days with her at a summer school in the French Pyrenees. She summed up her own justification for banning the face covering by saying, succinctly: “France is the country where everyone says ‘bonjour’.” She unpacked this remark: you cannot really greet another person from behind a veil. Here we have essentially the same claim about communication made by British minister Jack Straw a few years earlier. But where Straw made it on personal grounds – he would not speak with someone whose face was covered – Schnapper made it on grounds of a theory of civic life.

Implications

The usefulness of looking at the semiotics of public space are, I hope, evident from this brief excursion into the complex world of French reasoning. Let me just emphasize one dimension of what I have been saying.

Certain deep assumptions about the moral quality of public space provide the material for practical schemas concerning religion, state, and public interaction. Much of what Aristide Briand said in debates in 1905 could have been said in 2005—as are many of the justifications put forth by his more anti-clerical opponents. These “deep schemas” draw on philosophical and historical roots: the Revolution as seen through Rousseau’s (rather than de Tocqueville’s) eyes, the tradition of state corporatism, the deep enmity between Church and Republic, the centrality of the public school for post-Church moral cohesion, and the more recent ‘moral panic’ concerning Islam.

There is a broader methodological point to be made here as well. What I have done briefly is highlight elements of an ethnography of French political philosophy. This exercise makes no reference to normative theories, except insofar as they become practice theories, local theories of normative practice. We would learn nothing by training on France a normative lens based in Anglo-American liberal democratic theory as in Rawls, or by reducing French historical schemas and ideas to a notion of France as a ‘secular’ or ‘secular-liberal’ country. Rhetorical topoi do not provide adequate tools for analyzing laws and policies—any more than we would take U.S. politicians’ invocations of “freedom” as an adequate account of U.S. forms of governing religion. In France we could hardly appreciate recent moral protests and long-standing state policies about bioethics without understanding the ways in which Catholic moral upbringings shape French public life today. Nor would we understand the appeal of “the humanitarian” and “solidarity” without understanding those forces, as well as the mistrust of “merely libéral” approaches to economy and society. Anthropologists, of all appeal, need to begin with the particular ways of living and thinking and feeling that they encounter in fieldwork, and keep all pseudo-analytical typologies at a distance.