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H. S. Jones

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Introduction

The purpose of this book is both to evoke a ‘moment’ in the history of public argument in France and to connect it with a neglected tradition of argument about public affairs. It examines a determinate tradition in French political thought – the ‘state tradition’ – but considers that tradition to be all-pervasive in French political culture. It is therefore a tradition which needs to be studied in an historically specific context: we need to ask what issues, what problems, it formulates. Hence the ambiguous character of the book, for it began life as a D.Phil. thesis which took as its focus the debates on the problem of unionization in the French public services: did public officials have the right to form trade unions (*syndicats*) for the defence of their interests against their employer, the state; and if so, did they have consequent rights such as the right to strike? This problem of *syndicats de fonctionnaires* was hotly debated in France in the *bellé époque*. Until, with the imminence of war in 1913–14, it was displaced by questions relating to military service, it was arguably the most lively and intractable issue on the political agenda in the post-Dreyfus era. One of the aims of this study is to explain why this was such a problematic issue. The explanation offered is primarily a cultural one: the attempted formation of *syndicats de fonctionnaires* was the stimulus for, or the symptom of, a broader rethinking of the nature of the state and the organization of public institutions. It awoke a fundamental contest as to the nature of the state and its relationship with civil society. In the words of Harold Laski, who was well-versed in French legal and political controversies of the period, ‘the claim of the civil servant of the right to association has raised legal and political problems of a magnitude so immense that it is almost impossible to set limits to their implication’.¹ That this debate was so

¹ Harold J. Laski, ‘Administrative syndicalism in France’, in *his Authority in the Modern State* (New Haven and London 1919), pp. 326–7.

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pressing is finally inexplicable without reference to a pervasive preoccupation with the problem of the state in French political culture; and, more particularly, to a juristic preoccupation with the problem of the state which exercised a powerful hold over public argument. So the book begins with an analysis of the 'state tradition' and the importance of law and legal theory to that tradition (chapters 1 and 2). It then moves on to an examination of the specific problems in the organization of the state that arose in the era of the radical republic (chapters 3–5). And, because it claims that these problems prompted a basic rethinking of the nature of the state, the book concludes with an analysis of some of the major theoretical writings on the state, notably those of Duguit and Hauriou (chapters 6–7). Together the practical debates and the theoretical treatises formed part of a single intellectual 'moment', coherent enough to sustain historical analysis. It is that 'moment' which forms the subject of this book.

It will be evident from what has been said so far that the problem of *syndicats de fonctionnaires* will occupy a central place in this book. The book is not intended as a contribution to trade union history; nevertheless a few words need to be said by way of historical background about the unionization of the French public services.

The post-revolutionary French state was deeply suspicious of the idea of association. The first characteristic of the revolution had been that of a revolt against corporate privilege; in its eagerness to suppress guilds, universities and other embodiments of such privilege it did much to stifle the spirit of free association. The Le Chapelier law of 1791, a famed piece of revolutionary legislation, prohibited all forms of association. 'Il n'y a plus de corporations dans l'Etat', wrote Le Chapelier, 'il n'y a plus que l'intérêt particulier de chaque individu et l'intérêt général. Il n'est permis à personne d'inspirer aux citoyens un intérêt intermédiaire, de les séparer de la chose publique par un esprit de corporation.'² This prohibition was relaxed only slowly, for on top of the revolutionary fear of a return to *ancien régime* privilege was superimposed the post-revolutionary spectre of the Jacobin club. A law of 1834 permitted associations of fewer than twenty persons; but larger groups required special authorization.

In spite of impediments such as these, the early nineteenth century

² Quoted in Pierre Rosanvallon, *L'Etat en France de 1789 à nos jours* (Paris 1990).

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was marked by a flourishing spirit of ‘sociability’ which has been brilliantly evoked by Maurice Agulhon in a series of works. Agulhon has noted the consequent ‘conflict between an associationist civil society and an anti-associationist state’;³ and the quintessential battlefield on which that conflict was fought was in the public services themselves, as public officials sought to conquer the rights of association that in civil society were gradually coming to be recognized as the visible sign of citizenship.

One point to be underlined at the outset is that the unionization of the public sector was no mere offshoot of the growth of wider trade union organization. For one thing, it raised very different issues: this is a point to which we shall return, especially in chapter 3. Secondly, the public sector unions have long been essential, both numerically and strategically, to the French labour movement. That movement was historically weak in comparison with its British and German counterparts, so that, though in absolute terms the level of union membership in the French public services before 1914 was not enormous, it was nonetheless important in relation to the size of the union movement as a whole. At a time when the membership of the principal trade union federation, the *Confédération générale du travail* (CGT) did not exceed 350,000, that of the *Fédération des fonctionnaires* totalled some 200,000, a figure which did not include the 65,000 postal employees who belonged to a *syndicat* or an *association*.⁴ This was at a time when the *syndicat* was still illegal in the public services; when the 1901 law conferred the general right to form *associations*, some two-thirds of public employees took advantage of it.⁵ Union membership in the French public services was thus strikingly high: much higher than in the United Kingdom, where civil service unions were legal but where membership was 37,000 in 1906 and 84,000 in 1910.⁶ The public services long remained among the most highly unionized sectors of the French workforce. Though they were for the most part moderate, they played a role in the wave

³ Maurice Agulhon, ‘Working class and sociability in France before 1848’, in Pat Thane, Geoffrey Crossick and Roderick Floud (eds.), *The Power of the Past: Essays for Eric Hobsbawm* (Cambridge 1984), pp. 38–9.

⁴ Jeanne Siwek-Pouydesseau, *Le Syndicalisme des fonctionnaires jusqu’à la guerre froide* (Lille 1989), p. 15.

⁵ W. R. Sharp, *The French Civil Service: bureaucracy in transition* (New York 1931), p. 9; Judith Wishnia, *The Proletarianizing of the Fonctionnaires: civil service workers and the labor movement under the Third Republic* (Baton Rouge and London 1990), p. 3.

⁶ Siwek-Pouydesseau, *Le Syndicalisme des fonctionnaires*, p. 33.

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of strike activity of the *belle époque*: the postal strikes in Paris in 1909 and the railway strike of 1910 were particular *causes célèbres*.

All this, as we shall see, was in defiance of the law, which until 1946 retained its prohibition on *syndicats de fonctionnaires*. And in some ways it is a puzzlingly counter-intuitive phenomenon: public officials, including groups such as primary teachers (*instituteurs*) and postal employees benefited from secure employment and a guaranteed pension even if their salaries were modest. How is their defiance of the state to be explained?

It would be possible to formulate an explanation in terms of the social position of minor officials, who were often not far removed from the world of independent artisans from which the organized labour movement in France sprang. In spite of, or because of, their position as employees of the state, officials were commonly repelled by state socialism and attracted by the libertarian brands of socialism articulated by the Proudhonian tradition. As Siwek-Pouydesseau has noted, groups like primary teachers were classic examples of ‘ces classes charnières et hybrides entre “peuple” et “bourgeoisie”’: some were leading exponents of revolutionary syndicalism, others of *petit bourgeois* ideologies.⁷

Perhaps more important was the absence of formal guarantees for public officials in France. In the United Kingdom and Germany officials enjoyed the benefits of protection against political interference, for these guarantees were perceived by the state as a reinforcement of its own authority. It is no accident that in those countries the level of unionization in the public services remained low. But in France, as we shall see, the campaign for the establishment of similar guarantees, in the form of a *statut de la fonction publique*, was not to come to fruition until after the Second World War: *fonctionnaires* therefore had recourse to more direct methods of protecting themselves against the arbitrary will of politicians.

Why was this a problem? Trade union militancy in a larger sense was a problem for the state in the years before the First World War, and not just in France: the army, for instance, was drawn into industrial conflicts in the interest of the maintenance of order. And the espousal of revolutionary syndicalism by union leaders, even if not shared by the working class at large, helped induce a sense of panic in at least some political leaders.⁸ But, as is argued more fully

⁷ Ibid., p.16.

⁸ Peter N. Stearns, *Revolutionary Syndicalism and French Labor* (New Brunswick 1971).

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in chapter 3, the problem of *syndicats de fonctionnaires* is best seen not as an aspect of labour history but as an aspect of administrative history and the history of conceptions of the state. Public services constituted one of what Gneist called the ligaments between state and civil society, and if public servants invoked private sector rights and methods of self-defence, what could remain of the distinct 'logic' of state action?⁹ But the question is only thrown one stage further back: what is the significance of the assumption that public institutions must have their own distinct logic? This is the question addressed in the first chapter.

⁹ Cited in Theodor Schneider, *State and Society in our Times: studies in the history of the nineteenth and twentieth centuries* (Edinburgh 1962), p. 46.

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CHAPTER I

Political culture and the problem of the state

THE STATE AS A CULTURAL VARIABLE

This book is about a type of political culture. This fashionable concept is hard to define. Leonard Schapiro defines it as ‘a kind of amalgam of habits, traditions and attitudes which gives its character to a political system’.¹ Keith Baker, in his introduction to the first volume of a three-volume work which constitutes a major attempt to place the concept of political culture at the centre of historical analysis, has sought to construct a more elaborate definition. Having defined politics as ‘the activity through which individuals and groups in any society articulate, negotiate, implement, and enforce the competing claims they make one upon another’, he conceives of political culture as ‘the set of discourses and practices characterizing that activity in any given community’. It is what ‘gives meaning to political activity’, while itself being shaped by that practice.² What all definitions agree upon is that the concept of political culture directs attention towards *meaning* as the focal point of historical inquiry.

Specifically, this book is about that type of political culture which accords to the idea of the state the pivotal role in political discourse. That type of political culture we shall label a ‘state culture’; political societies of that type belong, we shall say, to a ‘state tradition’. This concept of a ‘state culture’, and an associated contrast drawn between continental European and Anglo-American political cultures, are central to the argument. Though historically – at least since the days of Colbert – the French state has been more activist in

¹ Leonard Schapiro, ‘The importance of law in the study of politics and history’, in his *Russian Studies* (London 1986), p. 29.

² Keith Michael Baker, ‘Introduction’, to Baker (ed.), *The French Revolution and the Creation of Modern Political Culture, I, The political culture of the Old Regime* (Oxford 1987), p. xii.

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economic affairs than its British counterpart, the cultural difference is best seen not in terms of collectivism against individualism but rather in terms of a willingness or reluctance to use the concept of the state in political debate. A bald statement of the peculiarities of Anglo-American political cultures is obviously elusive, but a number of points may be made to help clarify this contrast. Anglo-American political cultures have tended to find their unity in institutions, allegiances and values at the level of civil society: in Victorian England, to quote José Harris, ‘the corporate life of society was seen as expressed through voluntary association and the local community, rather than through the persona of the state’; the state has rarely been seen as the principal vehicle for the creation or maintenance of national identity.³ There has been a consequent tendency to view the state – and public institutions generally – in a pragmatic and instrumental manner: to ask whether they do their job. What is lacking is a strong sense that if public institutions are to be agents of unity they must embody principles which differentiate them from the institutions of civil society: a sense that there must be a distinct ‘logic’ of public institutions. It is this sense which has done so much to colour French political culture and continental European political culture more widely, but which has been peripheral to British political culture. The recent attempts by British Conservative governments to subject the public services to market disciplines have fed (for all their avowed radicalism and their appeals to the notion of ‘citizenship’) on an age-old cultural uncertainty about the purpose and justification of public services.

Crucially, in continental European cultures a key role has been attributed to the institutions of central government as agents of unity. This point was eloquently expressed by President Pompidou in an address to his former colleagues on the Conseil d’Etat in 1970:

Depuis plus de mille ans, d’ailleurs, il n’y a eu de France que parce qu’il y a eu l’Etat, l’Etat pour la rassembler, l’organiser, l’agrandir, la défendre, non seulement contre les menaces extérieures mais également contre les égoïsmes collectifs, les rivalités de groupes. Aujourd’hui, plus que jamais, sa force n’est pas seulement indispensable à la nation pour assurer son avenir et sa sécurité, mais aussi à l’individu pour assurer sa liberté.⁴

³ José Harris, ‘Society and the state in twentieth-century Britain’, in *The Cambridge Social History of Britain 1750–1950* (Cambridge 1990), III, pp. 67–8.

⁴ Georges Pompidou, *Entretiens et discours 1968–1974* (Paris 1975), I, p. 138.

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In the light of this contrast, it makes sense to think of England and the United States as instances of ‘stateless societies’. This term is used not, of course, in the anthropologist’s sense of a primitive community organized on the basis of (perhaps) clan or blood ties, but in the political scientist’s sense of a modern society which lacks ‘a historical and legal tradition of the state as an institution that “acts” in the name of the public authority... as well as a tradition of continuous intellectual preoccupation with the idea of the state’.⁵ It draws attention to the contrast between the continental European concept of the state as a corporation bearing rights against and duties towards its subjects, and the English understanding of government as a trust.⁶ As Matthew Arnold wrote, ‘We have not the notion, so familiar on the Continent and to antiquity, of the State – the nation in its collective and corporate character, entrusted with stringent powers for the general advantage, and controlling individual wills in the name of an interest wider than that of individuals.’⁷ In one sense it is a commonplace to observe the reluctance of Anglo-American political and academic cultures to employ the concept of the state, which the American political scientist Bentley derisively dismissed as ‘metaphysical spook’.⁸ That fundamental document in the history of the modern British state, the Northcote–Trevelyan report on the civil service in 1853, did not use the word ‘state’ at all, except in expressions like ‘department of state’ and ‘under-secretary of state’. In France, by contrast, the word ‘Etat’ is capitalized, almost alone among common nouns. But is the contrast between two kinds of political culture more than a linguistic contrast? To emphasize the sharp contrast between the Anglo-Saxon and continental European political traditions tends to provoke scepticism, not least in the empirically minded student of British politics. So at the outset we face the problem of how to convince the sceptic of the importance of the distinction. How can we plausibly pin down the distinction between state cultures and stateless cultures?

To count the frequency of uses of the word ‘state’ in English and French newspapers or parliamentary debates would not resolve the

⁵ Kenneth Dyson, *The State Tradition in Western Europe* (Oxford 1980), p. viii.

⁶ A brief but valuable discussion appears in Schapiro, ‘The importance of law’, pp. 29–31. See also, classically, F. W. Maitland, ‘Trust and corporation’, in *The Collected Papers of Frederic William Maitland*, ed. H. A. L. Fisher (Cambridge 1911), pp. 321–404.

⁷ Matthew Arnold, *Culture and Anarchy* (Cambridge 1963 edn), p. 75.

⁸ Quoted in George Armstrong Kelly, *Hegel’s Retreat from Eleusis: studies in political thought* (Princeton 1978), p. 92.

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question, for it could be maintained that English legal and political argument, while tending to ignore the concept of the state, uses terms like ‘crown’ as functional equivalents. One point to be made is that the word ‘crown’, though capable of bearing an abstract sense, is much more liable than ‘state’ to blur the important distinction between the public office and the person who holds the office. At the time of writing, the British press is debating whether the monarch can and should pay income tax; but this problem has fed on a hazy understanding of the distinction between the public and private functions of the monarch.

One way of demonstrating that the use of the word ‘state’ has a deeper significance would be to show *what can be done* with the linguistic and intellectual apparatus of the state tradition: what does the concept of the state do in political argument? What sort of questions does it bring into focus? And, conversely, what sort of questions does it blur? These are some of the tasks this book sets itself. It asserts that the student of French history must learn the language of the state tradition in order to appreciate the force exerted by the concept of the state in public argument, and not to dismiss it as mystical verbosity.

One reason why the concept of the state enjoys such a pivotal cultural importance is that, to a far greater extent than other political concepts, it eludes attempts to reduce it to the status of a neutral descriptive term. It is, in the jargon, an ‘essentially contested concept’, irretrievably value-laden. The consequence is that where the concept of the state is given a central place in political discourse it permeates the whole of that discourse. It is not so much a thing as an idea, so that, as Burdeau puts it, ‘n’ayant d’autre réalité que conceptuelle il n’existe que parce qu’il est pensé’. Its point is to provide an account of that set of phenomena which constitute politics.⁹ Because, in ‘state cultures’, the concept of the state is at once so all-pervasive, so multi-faceted and so elusive, its use in public argument is best analysed in terms of what Kelly, following Saussure, calls its different ‘syntagmatic’ or relational uses.¹⁰ With what other term is ‘the state’ paired or contrasted?

The answer to this question is, of course, not straightforward: we have to be sensitive to the variety of possible pairings, and thus to the variety of uses to which the idea of the state may be put. The first

⁹ Georges Burdeau, *L’Etat* (Paris 1970), p. 14; cf. Rosanvallon, *L’Etat en France*, p. 14.

¹⁰ Kelly, *Hegel’s Retreat from Eleusis*, pp. 97–8.

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point to stress is that in some pairings the state is depicted as a benevolent and liberating power, in others as a repressive and tyrannical force. When paired with ‘man’ or ‘individual’, the state tends to have pejorative connotations: indeed that sort of pairing is characteristically (though by no means uniquely) associated with the political discourse of rugged individualism. When paired with ‘the Church’, the connotations of the term ‘state’ are likely to be much more contested. But when paired with terms like ‘corporation’, ‘private interests’, ‘les féodalités’, the state tends to have overwhelmingly favourable connotations: Pompidou, criticizing fashionable denunciations of the state tradition in 1971, insisted that the state was ‘la seule protection de ces citoyens contre la loi du plus fort, celle de la jungle où précisément il n’y a pas d’Etat’.¹¹ This book will show how a variety of these antitheses could be put to use in relation to one particular set of public issues. But it is worth looking briefly at how the concept of the state was employed by some of the founding fathers of the Third Republic.

The antithesis of *Etat/Eglise* was a common and powerful one, not least in Jules Ferry’s writings and speeches; but it is also striking just how much the force of the idea of the state owed to its antithetical pairing with private interests. Let us look at Ferry’s speech in the national assembly on 17 June 1874, when he defended the principle of the unity of the electoral college against the Moral Order government’s proposal to introduce representation of interests into elections to municipal councils. Ferry couched his argument in terms of an analysis of the fundamental characteristics of the modern state, which he contrasted with the feudal state. The basic principle of the modern state, he insisted, was the supremacy of the general interest over private interests: ‘L’Etat moderne repose tout entier sur la conception de l’intérêt général qui fait plier devant lui tous les intérêts particuliers. C’est là ce qui distingue l’Etat moderne de l’Etat féodal, et c’est ce qui en fait la force et la dignité.’¹²

Already in the 1860s Ferry was worried that modern industrial society was creating new feudal magnates, which he variously labelled ‘l’oligarchie financière’ and ‘la féodalité industrielle’. Gambetta, more than Ferry, unhesitatingly insisted on the ascendancy of the state over ‘toutes les convoitises intéressées’. His invocation of the state is worth quoting in full:

¹¹ Pompidou, *Entretiens et discours*, 1, 143.

¹² Pierre Barral (ed.), *Les Fondateurs de la troisième république* (Paris 1968), p. 278.