

# THE FRENCH STATE IN QUESTION

*Public law and political argument in the Third Republic*

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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’.<sup>1</sup> That this debate was so

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

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.'<sup>2</sup> 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

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

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',<sup>3</sup> 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*.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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

<sup>3</sup> 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.

<sup>4</sup> Jeanne Siwek-Pouydesseau, *Le Syndicalisme des fonctionnaires jusqu'à la guerre froide* (Lille 1989), p. 15.

<sup>5</sup> 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.

<sup>6</sup> Siwek-Pouydesseau, *Le Syndicalisme des fonctionnaires*, p. 33.

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.<sup>7</sup>

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.<sup>8</sup> But, as is argued more fully

<sup>7</sup> Ibid., p.16.

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

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?<sup>9</sup> 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.

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