CIVIL RELIGION IN FRANCE: THE GALLICAN HYPOTHESIS

EMMANUEL TAWIL

I. THE MYTH OF THE INDIVISIBILITY OF “LAÏCITÉ” AND NATION

According to almost all French scholars, the French Revolution of 1789 changed the link between religion and nation in France. Before the French Revolution, the state did not accept religious dissenters. The state was officially Catholic and this character implied that it was not possible to consider a non-Catholic a citizen. Following this analysis, when Article 10 of 1789’s Déclaration des droits de l’homme provided that “no one can by punished for opinion’s motives, even religious opinions” (“Nul ne doit être inquiété pour ses opinions meme religieuses”), the Constituent Assembly adopted a new concept of “Nation.” The nation, now considered as the only sovereign political body (under Article 3), would have ceased to be defined by a religious element. As a consequence, Protestants and Jews became French. All were equal under the law.

The new approach initiated in 1789 is presented as constant since 1789. The Royal Restorations of 1814–1815 would not have changed the fact that national belonging has nothing to do with denominational belonging. In France, everyone is sure that this definition is the only possible definition of a nation.

After the 1870s War, Ernest Renan wrote his famous essay Qu’est-ce qu’une Nation? (What is a Nation?). He defined the nation as not based on a common race, religion, territory, or language.

---

1. Déclaration des droits de l’homme art. 10 (1789).
2. Id. art. 3.
5. Ernest Renan, Qu’est-ce qu’une nation? (1882).
6. See generally id.
nation, he said, is a “spiritual principle” based “on two elements, which, in fine, are only one. The first is the common possession of memories; the second is the actual will, the desire to live together, the will to continue to live on the common undivided inheritance.”\textsuperscript{7} In his opinion, it is impossible to build a nation on a religious ground. The reason is that “[n]owadays . . . there is no human group which has a single belief. Everyone believes and worships as he wants to do, as he is able to do. It is possible to be French, German, English, even if Catholic, Protestant, Jewish, even having non religion.”\textsuperscript{8} Renan refused all approaches different from his own. He specifically refused the German definition, which defined a nation based on racial characters.\textsuperscript{9}

Renan’s definition of nation is dominant in France. It is almost the official republican definition. It would be possible to find many examples of recent official documents and books that refer to this approach,\textsuperscript{10} such as the recent book of Dominique Schnapper, \textit{La communauté des citoyens} (The Community of Citizens).\textsuperscript{11} Dominique Schnapper adopts the same approach as Renan: nation is not grounded on religion. A nation cannot exist, Schnapper says, with any “particularity which contraries the principles of a Nation of Citizens. In order to insure the existence of a Nation of Citizens, . . . individuals must admit that there is a unique public domain, independent from religious links and solidarities, . . . and must respect the rules which organize this public domain.”\textsuperscript{12} From that point of view, secularism ("\textit{Laïcité}") defined as the refusal of religious particularities in the public domain, cannot be separated from the idea of nation.

Dominique Schnapper was a member of the French Constitutional Council from 2001 to 2010. The opinions of judges are secret in France, so it is impossible to be sure of her influence. She was, however, a member of the Constitutional Court, when it reached the decision 2004-505 DC of November 18, 2004, which considered that “provisions of Article 1 of the Constitution

\begin{itemize}
\item \textsuperscript{7} \textit{Id.} at 26.
\item \textsuperscript{8} \textit{Id.} at 26.
\item \textsuperscript{9} \textit{See, e.g.}, Johan Gottlieb Fichte, \textit{Addresses to the German Nation}, at xxxi-xxxii (George A. Kelly ed., Harper Torch Books 1968) (1807).
\item \textsuperscript{11} Dominique Schnapper, \textit{La communauté des citoyens} 203 (2002).
\item \textsuperscript{12} \textit{Id.} at 15.
\end{itemize}
whereby ‘France is a Secular Republic’... forbid persons to profess religious beliefs for the purpose of non-compliance with the common rules governing the relations between public communities and private individuals.”

This Comment disagrees with this approach. 1789 was not such a major change: before 1789, the French identity was Gallican rather than Catholic. The French Revolution did not really change French religious identity or the relation between religious identity and national identity.

II. THE FRENCH NATION IDENTIFIED WITH THE GALLICAN CHURCH

In the Ancienne France, Gallicanism existed as the Church of France (Ecclesia Gallicana), which consisted in the various dioceses of France. Because of the so-called Liberties of the Gallican Church, the French national Church was presented as autonomous from the Church of Rome.

From a Gallican point of view, the nation and the Gallican Church were the same body. All French citizens were members of the Catholic Church, which in France was considered to exist as the Gallican Church.

A. The Basic Law of Gallicanism

The first principle of Gallicanism was the absolute independence of the king of France in temporal. The pope was considered to have no power in temporal. This principle has been sustained by theologians, bishops, and jurists since at least the beginning of the fourteenth century. The consequences were numerous.

15. Declaration of the School of Theology of the Sorbonne University of May 8, 1663 arts. 1-2, reprinted in 3 Pierre-Toussaint Durand de Maillane, Dictionnaire de Droit canonique 423 (1787) [hereinafter Sorbonne Declaration].
Most importantly, the pope could neither excommunicate nor judge the king of France.20

Second, the king of France held a special place within the Church. He was the “Very Christian King, Anointed, First Son, Protector of the Church,”21 “Protector of Ecclesiastical Discipline.”22 The royal anointment, which occurred during the coronation, was a manifestation of this divine election of the king of France. This divine election was also manifested by the fact that he was anointed with an oil, which seemed given by the Lord himself for the celebration of Clovis’ baptism,23 at the end of the fifth century. The king of France, elected by God, anointed by the Lord, made some miracles; for instance, he was able to cure scrofulous.24 Until the reign of Louis XVI, miracles occurred! In the seventeenth century, the royal touch was still considered a medicine by European medical treaties.25 For all these reasons, it was admitted that the king was quite a saint.26 He was considered to have powers both in temporal and spiritual matters. Pithou wrote that God had “committed in sovereignty the King for both the Kingdom and the Gallican Church.”27 A text presented the king as having a competence in “Divinity.”28 In the seventeenth century, the king was frequently compared to a “bishop of the outside.”29

Third, since he was sacred, the king was presented as the guarantor of the Catholic faith. Pithou pretended that the pope had to address his profession of faith to the king of France after his elec-

19. See Pithou, supra note 17, art. 15, at 17–22.
24. Id. at 357.
25. Id. at 115–19.
26. See 1 Dupuy, supra note 20, at 615.
27. “[L]e royaume que Dieu . . . a commis en souveraineté [au Roi], ensemble l’Église gallicane . . . .” Pithou, supra note 17, art. 7, at 7.
The king had to receive the canons of the new Councils and give the Placet to papal acts in order to make them apply in France. The procedure was justified as a kind of control of the conformity of these texts to the Holy Ancient Catholic Doctrine.

Fourth, the pope had only limited power over the Church of France. He had no immediate power on the Gallican Church. He needed the authorization of the king in order to send a Legatus a latere. The bishops needed the king’s consent before going to Rome. The pope could not collect taxes on the Church of France and the papal acts had no authority by themselves, unless a Placet was given.

Fifth, bishops, Sorbonne’s School of Theology, and jurists sustained Counciliarism—that is, the superiority of the council over the pope—since the end of the fourteenth century. They even held it possible to appeal against a papal decision to the next Council.

B. Characters of Gallicanism

First, Gallicans considered their autonomy ancient. It was founded on an immemorial tradition. For Gallicans, this autonomy of the Church of France existed since the first Christian communities and had never disappeared. The autonomy of the Gallican Church consisted mainly in the rules applied in France: only the canons of the most ancient Councils of the Church were in force in France. This point was important both for the Parliament of Paris (which in 1503 wrote that “in hoc maxime consistit

---

30. Pithou, supra note 17, art. 9, at 9–10. In fact, this occurred only a few times. See Pierre Dupuy, Commentaire sur le Traité des Libertez de l’Eglise gallicane 34–36 (1715).
31. See Jousse, supra note 22, at xiv.
32. Pithou, supra note 17, art. 11, at 12; 2 Dupuy, supra note 28, at 916–1019.
33. Pithou, supra note 17, art. 13, at 15; 1 Dupuy, supra note 20, at 679–85.
34. Pithou, supra note 17, art. 14, at 16; 1 Dupuy, supra note 20, at 679–85.
35. See 1 Dupuy, supra note 20, at 429–40; Héricourt, supra note 22, at 98; Jousse, supra note 22, at xiv; Pithou, supra note 17, arts. 44, 77, at 47–48, 71.
37. Sorbonne Declaration, supra note 15, art 5.
38. See Charles Bonel, Institution au droit ecclésiastique de France 439 (1679); Pithou, supra note 17, art. 40, at 41–43; 1 Dupuy, supra note 20, at 464–96.
39. See Martin, supra note 14, at 9–149.
40. Pithou, supra note 17, art. 78, at 78.
41. Martin, supra note 14, at 31.
42. See generally Rene-Louis de Voyer, Histoire du Droit public ecclésiastique Françoix (1740).
43. “[L]es canons et regles des anciens conciles de l’Eglise receus en ce royaume . . . .” Pithou, supra note 17, art. 5-6, at 5.
libertas Ecclesiae Gallicanae")\textsuperscript{44} and for bishops (who wrote in the Declaration of 1682 that “valere etiam regulas, mores et instituta a regno et ecclesia Gallicana recepta”).\textsuperscript{45} As a consequence, the Church of France was bounded neither by the pope’s legislation\textsuperscript{46} nor by new councils’ canons, so long as they were not received by an act of the king and Parliaments.\textsuperscript{47}

This particularity of the Church of France was justified by the fact that these rules were older.\textsuperscript{48} Moreover, Gallicans considered these norms to rule the whole Catholic Church: from a Gallican point of view, France had conserved the true discipline of the Church, free from papal infringement.\textsuperscript{49} Importantly, this analysis was the basis for the idea that the Church of France was defending the only right doctrine, which should be recognized as the only true doctrine by the entire Catholic Church. This point is very important. The practical problem was determining which rules were binding.\textsuperscript{50}

Second, the legitimacy of the Liberties of the Gallican Church where proven. The authors researched the older texts to justify the autonomy of the Church of France and published these texts.\textsuperscript{51} The most important of these handbooks was Les preuves des Libertés gallicanes of Dupuy.\textsuperscript{52} This book was important because, when Pithou published his Libertez de l’Eglise gallicane en 83 articles, he only reaffirmed all the important rules of Gallicanism, without justifying them. In 1631 and 1651, Dupuy published a collection of various ancient documents from many archives which justified the articles of Pithou.\textsuperscript{53} As a consequence of the fact that Pithou’s articles

\textsuperscript{44} “The Liberty of the Gallican Church is grounded on this principle.” See 2 DUPUY, supra note 28, at 930.

\textsuperscript{45} Only the rules, habits, and acts received by the Kingdom and the Gallican Church are in force. CLERGY DECLARATION, supra note 16, art. 3.

\textsuperscript{46} “Nous ne sommes obligés en France que de suivre ce qui est dans le corps de droit ou le corps des canons.” BONEL, supra note 38, at 440.

\textsuperscript{47} For example, some canons of the Council of Trent contrasted with the liberties of the Gallican Church. See generally Alain Tallon, La France et le Concile de Trente (1997).

\textsuperscript{48} See Quentin Epron, Le Gallicanisme a-t-il connu l’idée d’un ordre juridique, Droits, no. 35, 2002 at 3, 3.

\textsuperscript{49} “Ces libertés consistent en ce que l’on a conserve en France plusieurs anciens usages fondés sur les Saints Canons sans se soumettre à de nouvelles règles de discipline auxquelles les Papes ont assujetti plusieurs églises.” HERICOURT, supra note 22, preface.

\textsuperscript{50} See BONEL, supra note 38, at 15–25.

\textsuperscript{51} See DUPUY, supra notes 20 and 28.

\textsuperscript{52} Id.

\textsuperscript{53} Id.
were proved, they were considered to have the same authority as law.54

Third, the control of the Gallican Liberties by the Church belonged to the king himself (who swore to make them respected during the liturgy of coronation) and to the Parliaments, especially when they had to rule on an *appel comme d’abus*. This special procedure was used in order to control a judicial decision of an ecclesiastical tribunal.55

C. Gallicanism and Roman Church’s Doctrine

Gallicans considered themselves true Catholics. They insisted on the fact that autonomy of a national church did not mean separation: the Gallican Church was a part of the Catholic Church. The Church of France was not in the same situation as the Church of England after the schism of Henry VIII. Gallicans pretended to be “good and zealous Catholics.”56 In the seventeenth century, inspired by Psalm 137, Jacques-Bénigne Bossuet described as essential the link with Rome:

Holy Church of Rome . . . . . we will always hold on the unity with you by our most profound entrails. If I forget thee, O Holy Church of Rome, let my right hand forget her cunning. If I do not remember thee, let my tongue cleave to the roof of my mouth; if I prefer not you above my chief joy.57

Moreover, Gallicans pretended that some of the Gallican Liberties were recognized by the pope. They referred to some texts of the pope that seemed to admit such recognition.58

But in reality, Rome never accepted Gallicanism. Counciliarism was condemned,59 as were both the Declaration of the Clergy of France of 168260 and *Liberté de l’Eglise gallicane* of Pithou.61 Rome rejected the absolute independence of the king of France in tem-


57. “Saine Église Romaine . . . nous tiendrons toujours à ton unité par le plus profond de nos entrailles. Si je t’oublie Sainte Église Romaine, puisse-je m’oublier moi-même! Que ma langue se sèche et demeure immobile dans ma bouche, si tu n’êtes pas toujours la première dans mon souvenir; si je ne te mets pas au sommet de mes cantiques de réjouissance.” 2 Felicité Robert de Lamennais, *Œuvres complètes* 130 (1839).

58. See, e.g., Pithou, *supra* note 17, at 72, at 73.


poral, the fact that the king was presented as the guarantor of the Catholic faith, and the limitation of papal power on the Church of France.

Even though condemned by Rome, the Gallican ideas were generally admitted. They were commonly shared, quite a part of a national mentality. Moreover, rites and liturgies were different from those of Rome.

Gallicanism was an element of the national identity. But it was also a universalism: Gallicans thought they were conserving the true discipline of the Catholic Church and that Gallican principles had to rule the whole Catholic Church.

III. GALICANISM AND RELIGIOUS OFFICIAL DOCTRINE AFTER 1789

A. Revolution and Gallicanism

Anticlericalism was not the basis of the French Revolution of 1789. In fact, the new organization of the Church of France (“la constitution civile du Clergé”) was based on Gallicanism. The redactors of this law (Durand de Maillane; Grégoire) were Gallican. They pretended that parliament, as the king before the Revolution, was competent for restoring the Church. They were sure to act as Catholics. After the papal condemnation of Constitution civile du Clergé, and the schism which was its consequence, they considered themselves as the true Gallican Church. It is not important to determine if it was a real Gallicanism or not. But, the fact that they referred to Gallicanism is a sign of the importance of this doctrine in French mentality. Those people were destroying the whole organization of French administration. But in religious matters, they pretended to respect Gallicanism, which they considered to be the only true Catholicism.

B. Gallicanism in the Nineteenth Century

After the French Revolution, the Concordat of 1801 recognized an important power of the pope by stating his competence in dismissing bishops. This was incompatible with Gallican princi-
But, with the Articles Organiques of 1802, Portalis reestablished Gallicanism: Article 1 reestablished Placet; Articles 6 to 8 reestablished Appel comme d’abus; and Articles 6 and 24 referred to Liberties of the Gallican Church. The decree of February 25, 1810, provided that the Declaration of 1682 was a “general Law of the Empire.” From a juridical point of view, this organization was very different from the organization that existed before 1789: there was no more Parliament of Paris that would be competent to intervene; the power of the administration was more important; Catholic structures were quite a part of the state’s structures. Dr. Bruno Neveu proposed to describe it with the qualification of “administrative Gallicanism.”

In the 1820s, some authors initiated an ultramontane movement of “restoration” of the papal authority on the Church of France. They pretended that Gallicanism did not conform to the true Catholicism and tried to substitute some Roman traditions for the ancient Gallican traditions. Until the end of the 1840s, those people were marginal in the Church of France. Theologians and jurists defended Gallicanism, which continued to appear as the normal doctrine of the Church, conforming to the apostolic tradition. For example, in 1818, Frayssinous published Les vrais principes de l’Eglise gallicane, which presented as universal principles autonomy of the Church of France, independence of the State from Papal intervention, and Counciliarism. The School of Theology of the University of Paris took the same approach. For that
school, the Declaration of 1682, Bossuet’s books, and Sorbonne’s doctrine were the true Catholicism. Until the 1850s, it seemed that the Gallican tradition continued to dominate. After that date, however, ultramontane doctrine became more and more important. After the Syllabus of 1864 and the First Council of Vatican of 1870, it was no longer possible to suggest that Gallicanism was compatible with Catholicism.75 French Catholics ceased to follow Gallican doctrine, even if in private, many theologians, bishops, and priests continued to defend it.

For jurists, Gallicanism remained important. From the 1840s to the 1860s, Dupin published his very important book, Libertés de l’Eglise gallicane.76 This book is both a collection of texts and a commentary of those texts. Dupin demonstrated that the nineteenth century’s law was the continuance of the ancient law—an important defense of Gallicanism. Until the Separation Law of 1905, jurists often referred to Pithou or Guy Coquille, and tribunals frequently mentioned Gallican principles in their decisions.77

Gallicanism ceased to be the dominant approach of Catholicism in France after the first Council of the Vatican. Before that, as long as Gallicans were numerous, they considered ultramontane doctrine as a foreign doctrine. The supporters of ultramontane doctrine were considered traitors. Gallicans identified themselves with France. During the polemic, Gallicans were sure to defend France. At the same time, they also had the certitude of defending the only true Catholicism. Gallicanism thus remained both nationalist and universalist.

C. Did Gallicanism Disappear after the Separation Law?

This Comment suggests that Gallicanism did not disappear. Before World War II, within French Catholicism, many expressed the idea that a Church of France existed, autonomous from Rome, and that the Roman Church was not competent to intervene in temporal matters.

In the 1920s and 1930s, Louis Canet, who was Counselor for Religious Affairs in the Ministry for Foreign Affairs, had occasions to defend Gallican doctrines. The archives of the Conseil d’État contain some documents in which he presented Gallicanism as the

75. Gough, supra note 72, at 230.
76. Dupin, supra note 17.
77. See Emmanuel Tawil, Du gallicanisme administratif à la liberté religieuse 29–47 (2009).
official doctrine of the Church of France, a doctrine that had to be defended against papal authority.  

The survival of Gallicanism in French Catholics’ mentality was also clear during the Action Française crisis. The newspaper L’Action Française, edited by Charles Maurras, defended a doctrine that contradicted Catholicism. L’Action Française’s purpose was to restore monarchy; and everything, including religion, was submitted to its political project. For the most part, the Catholic traditional elites were supporters of L’Action Française. Even if Maurras was clearly atheistic, they considered L’Action Française as the main supporter of Catholicism. Pius XI condemned L’Action Française; it was included in Index librorum prohibitorum. Despite this condemnation and the canonical sanctions against readers of L’Action Française, most continued to read it. Some theologians justified the disobedience with arguments of the pope’s incompetence on temporal matters.

IV. ELEMENTS OF GALLICANISM IN LAÏCITÉ

Is Gallicanism still a reference in French contemporary society or French Catholicism?

No one continues to define Catholicism in France as Gallicans did. No one would say that there is a Church of France autonomous from the Church of Rome. But, two important elements of the Gallican tradition still exist, which are a part of the common approach of Laïcité.

The first element is the desire to ensure the primacy of the law of the state. Gallicans intended to ensure the authority of the king by various principles: independence of the king in temporal, organization of the Place, and so forth. These were directed against papal authority. Today, the state still wants to ensure the primacy of its authority: for example, by the Law on Religious Signs of 2004, it intended to reaffirm its authority on Muslims. This desire of ensuring state authority is not far from a kind of nationalism.

78. See id. at 137–40.
79. See de Villepin, supra note 10.
80. See id.
81. See id.
The second element is the certitude of defending a universal approach of law and religion. Gallicanism was considered the true Catholicism. The Gallican Church pretended to have conserved the real Christian discipline. It had to be followed. Nowadays, Laïcité plays the same role. The Law of Separation is frequently presented as a model: the French are sure to have the best system. The Prime Minister wrote in 2004 that the Law of 1905 made France “le phare de la liberté” (the lighthouse of freedom). A lighthouse is used to guide sailors: when we were Gallican we pretended to guide the Catholic Church; we are now “laïcs” and we continue to be sure to know the best direction for the whole universe.

84. See de Villepin, supra note 10.