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Citation: 21 Duke J. Comp. & Int'l L. 626 2010-2011

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Sat May 14 10:19:29 2016

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APPENDIX

Tracing the French Statute on Religious Dress at School

“Statute No. 2004-228 Dated 15 March 2004 Regulating, in Application of the Principle of Secularism,⁷⁹ the Wearing of Signs or Clothes Expressing a Religious Affiliation in Public Primary Schools, Junior and Senior High Schools”

[“*Loi no 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics*”]

Article 1

“In public primary schools, junior and senior high schools, the wearing of signs or clothes whereby students conspicuously express a religious affiliation is prohibited.”

[“*Dans les écoles, les collèges et les lycées publics, le port de signes ou tenues par lesquels les élèves manifestent ostensiblement une appartenance religieuse est interdit.*”]

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By way of supplement to the usual reading of law as only that which is posited, the comparativist-at-law, having made the French statute into his object of study, abiding by a sophisticated appreciation of textuality, purports to invent articulable traces constitutively haunting the law-text through infinitely complex networks of enmeshment—and therefore structurally partaking of it as law-text. Illustrative statements of such comparativism *other-wise*, deliberately set in the epigrammatic mode, follow. (In a context where other editorial strictures obtained, each entry would be developed at length.) As he performs this deployment with deconstructive scrupulosity, being aware that no text allows for the production of meaning at will, the comparativist-at-law, whose engagement

79. French has “*laïcité*,” which carries a local cultural colour that “secularism” fails to convey. Indeed, the French language also has words like “*séculier*” and “*sécularité*.” These, however, are not used in France in matters concerning churches and state. In other terms, there exists a specifically French version of secularism bearing a specific appellation.

is always contingent and whose account/ascription of significance remains unsaturable (and therefore irreconcilable with the idea of a totalized or holistic system of meaning), hearkens to law-as-culture and thereby militates for the recomposition of the coordinates of comparison away from mere positivism, whose yield can only ever be confined to an identification of foreign law and not to the requisite understanding of it. Observe that to the extent that they would want to resist tracing, casting it as counterlaw rather than accepting it as the hyperlaw that it is, perhaps denigrating it as some form of contemplative aestheticism mired in unauthorized lucubrations, orthodox comparativists-at-law would be objecting to *what has always already happened*.

The tracing at hand, then, is informed by theoretical commitments which, before I turn myself into a sort of Borgesian "*hacedor*," I am keen to supplement by way of a brief exercise in heteroglossia. For these purposes, I have appropriated fragments from five different texts, which I now want, no doubt artificially, to exhibit adjacently.

"Come on! Play! Invent the world! Invent reality!"⁸⁰

"For the point at issue is merely the meaning of the texts, not their truth."⁸¹

"What can one do but speculate, speculate, until one hits on the happy speculation?"⁸²

"No one, however special his point of vantage, can get . . . into the shrine of the single sense. . . . The pleasures of interpretation are henceforth linked to loss and disappointment."⁸³

"A thousand possibilities will always remain open even as one understands something of that sentence that makes sense."⁸⁴

80. VLADIMIR NABOKOV, LOOK AT THE HARLEQUINS!, in NOVELS, 1969-1974 571 (Brian Boyd ed. 1996) (1974).

81. BARUCH SPINOZA, THEOLOGICAL-POLITICAL TREATISE 88 (2d ed., Samuel Shirley transl. 2001) (1670) ("*De solo enim sensu-orationum, non autem de earum veritate laboramus*").

82. SAMUEL BECKETT, THE UNNAMABLE (1958), in 2 THE GROVE CENTENARY EDITION 363 (Paul Auster ed. 2006) ("*Que voulez-vous, il faut spéculer, spéculer, jusqu'à ce qu'on tombe sur la spéculation qui est la bonne*"). The English text, a re-writing from the French, is Beckett's.

83. FRANK KERMODE, THE GENESIS OF SECRECY 123 (1979).

84. DERRIDA, LIMITED, supra note 13, at 122 ("*Mille possibilités resteront toujours ouvertes, alors même qu'on comprend quelque chose de cette phrase qui fait sens*").

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- A series of recent judicial, legislative, and political interventions.
 - o Decision of the *Conseil d'Etat* dated 27 November 1989
 - o Circular of the Minister of National Education dated 12 December 1989
 - o Report of the Stasi Commission dated 11 December 2003
- A history of anti-clericalism manifesting itself as early as 1302.
 - o Edict of Nantes (1598)
 - o XVIIIth-century Enlightenment (Voltaire *et al.*)
 - o Revolution (1789)
 - o XIXth-century ultramontanism
 - o "Dreyfus Affair" (1894-1899)
 - o Statute on separation between churches and state (1905)
 - o Constitution of 4 October 1958
- A Rousseauian conception of "freedom" whereby freedom is achieved through the state rather than against it.
- A cultural idea of "citizenship" whereby "citizenship" is created by the state and is premised on the ideas of "universalism" and "equality", thus excluding the notion of "groups" or "collective rights" and entailing cultural assimilation to "Frenchness" for all.
- A "Gallican" glorification of the state manifesting itself by way of a centralized state authority and strong state involvement in the fashioning of Frenchness.
- A highly-respected school sector entrusted with the highly-valued mandate of instituting French Republican values and designed as a "neutral" space beyond the reach of counter-powers (such as the church, groups, or the family).
- An intellectual and spatial organization of French society featuring the categorical distinction between the "public" and the "private" realms.
- A growing presence of Islam in France.
 - o Demographic significance of the Muslim community in France
 - French colonial policy
 - French post-colonial policy
 - o Perceived irreconcilability between French Republicanism and Islam
 - o Fear of Islam/Islamophobia
 - Heightened visibility of the Muslim community in France

- Revival of Islamic militancy in Algeria
- “9/11” (and subsequent terrorist attack in Madrid on 11 March 2004)
- A distrust of localism and differentialism correlating with a longstanding commitment to a unitary and egalitarian citizenry.
- A strongly hierarchical society and work environment correlating with ascertainable risk-aversion on the part of individuals (and, specifically, individual public servants).
- An openly-expressed desire for sustained state activism.
- A predilection for the enactment of apodictic statutes purporting to ensure fixity of meaning as an optimal instrument of social engineering.
- A predilection for abstraction over casuistry correlating with an institutional prioritization of “law” over “fact”.
- An objectification of women correlating with a longstanding conception of manliness translating into a specific approach to the conduct of gendered relationships.
 - “Courtly love” (or *amour courtois*)⁸⁵
 - Specificity of feminisms, more philosophical/literary than political/pragmatic
- A keen confidence in the French “civilizing mission” (or “*mission civilisatrice*”).
- A largely hermetic attitude vis-à-vis outside cultural influences.
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85. For an illustration of the kind of creative and erudite scholarship which, in my view, comparativists-at-law ought to have in mind as they proceed to substantiate their research, see PETER GOODRICH, *THE LAWS OF LOVE* (2006). In its author’s words, this text is concerned with “*lex amatoria*.”