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The recent evolution of foundations in France

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1. Introduction

Twice at the turning point of the millennium, I wrote a chapter on the situation of foundations in France in books directed by Helmut Anheier (Anheier and Toepler, 1999; Schlüter, Then and Walkenhorst, 2001). These comparative books showed that among European countries, France had, with Ireland, the less developed foundation sector contrasting with its post-war revival in the bulk of European countries. Has this position fundamentally changed twenty years later? And have the historical, juridical and sociological reasons then evoked to explain the scarcity of foundations in France been altered nowadays?

The foundation has a two millennium tradition in Europe: philanthropy in Antiquity was advocated by writers such as Plato, Epicurus, Seneca and Cicero. The high school of Aristotle and the library of Alexandria were examples of outstanding foundations. In the middle Ages foundations were created at the initiative of the Church and through the donations of the nobility and rich guilds or brotherhoods. They ran hospices, hospitals, orphanages, monasteries, colleges and universities. In the 17th and 18th centuries monarchs across Europe were suspicious of the extension of mortmain property secluded from productive economy and escaping inheritance taxes. In France, Louis XIV and Louis XV restricted the rights of existing foundations and prohibited new ones

This millenary tradition was brutally eradicated in France by the 1789 Revolution while in other European countries foundations were gradually modernized. The reasons for this eradication are multiple: abolition of the privileges while foundations are the work of the privileged; state monopoly on activities of general interest proclaimed by the Le Chapelier Act that fight guilds as well as other intermediate entities and finally impecuniosities of the revolutionary government to finance wars against European countries. Therefore the Jacobin state, in conflict with the Church favorable to the monarchy, expelled the congregations and either sold the properties of the Church and its foundations to the rising bourgeoisie, nationalized and secularized some of them-- hospitals especially-- or replaced others by a state model, such as universities.

This eradication was durable. An often infused by the government shy resurgence of some foundations can be observed at the end of 19th century, following the 1887 Institut Pasteur, such as *Fondation Curie*, *Fondation Rothschild*. During the interwar period, *Fondation Deutsch de la Meurthe* and many foreign foundations were at the origin of the *Cité Universitaire*, an international hall of residence for foreign students in Paris. After WW2, André Malraux, the first Minister of culture encouraged the creation of foundations to promote culture. In 1969, Malraux was also at the origin of *Fondation de France*, the main multipurpose grant-making foundation in France. However there was a total absence of the so-called "boom of foundations" as elsewhere in Europe or United States in the years 1980-1990 (Archambault, 2001, 2004)

Of course this historical background is permanent and at the origin of the durable scarcity of foundations in France. However, the legislation has become more favorable to donations and foundation creation in the first decade of this millennium, as seen hereafter in a first part. Has France's lagging behind its European neighbors been caught up in the 21st century? This

issue will then be discussed with the most recent empirical data. Finally, the chapter shows that foundations are in competition with a large associative network; the French remain suspicious of foundations and wealthy individuals influence, as this specific feature can be illustrated by the controversies surrounding donations to rebuild Notre-Dame after the 2019 fire.

2. A more favorable legislation: 2003 and 2009 Acts

At the end of the last century, two recent laws gave a legal personality to foundations that were often confused with associations before:

- A 1987 Act defines a foundation as “the legal act through which one or several individuals or legal entities decide the irrevocable allocation of estate, rights or resources for a nonprofit making activity of general interest” The establishment of a *Fondation reconnue d'utilité publique* (RUP hereafter) is long, complicated and centralized. It requires a high minimum endowment of €762,200 that is not expendable. Government representatives must sit in its board up to one third. RUP foundations benefit a tax-exempt status and can receive tax deductible donations and legacies exempt from inheritance tax;
- According to a 1990 Act, **corporate foundations** are created by corporations, cooperatives or mutual societies by a simpler and independent of the state approval process. The founder has to devote a five-year renewable sum of at least €152,000, that has to be consumed during the five years period. Corporate foundations cannot receive donations and legacies.
- Because of the difficulty to create a RUP foundations, many individuals and some companies opted for a non autonomous legal status. These “**sheltered foundations**” with no minimum endowment are mainly hosted by *Fondation de France* or *Institut de France*, a public institution that houses the five academies. They have their own boards, deciding of their grants or activities, while the host institution usually manages their assets.

During the millennium decade the foundation landscape has changed dramatically since 2003 Patronage Act. This law, simplified the creation of a RUP foundation, enhanced tax incentives to donations and later new kinds of specialized foundations were proposed to the potential founders.

The 2003 Patronage Act includes administrative simplifications to the establishment of a RUP foundation and removal of the minimum permanent endowment that was formerly an important obstacle. In case of foundations devoted to temporary causes an expendable endowment can be authorized by the Council of State.

But the main change is the spectacular reinforcement of tax incentives for donors to RUP and business foundations:

- For individual donations, the tax credit on income tax rose from 40 per cent up to 66 per cent, with a cap rising from 6 per cent up to 20 per cent of taxable income. The donation over the cap can be deducted from income tax during the following five years. This last point is of course intended to enhance the creation of foundations. In addition since 2009, donations have been 75 per cent deductible from the wealth tax (*Impôt sur la Fortune*), with a cap of €50,000.
- Tax deductibility of companies giving rose from 33 per cent up to 60 per cent while the limit on authorized donations goes from 2.5 to 5 per thousand of turnover.

The French tax deductibility is now the highest in Europe.

At the end of the millennium decade, four new legal statuses of foundations were proposed to the potential founders in the field of research and higher education: scientific cooperation foundation, partnership foundation, university foundation and hospital foundation. These new foundations have different economic models according to their by-laws, sometimes with option for the founder between flow foundations, expendable or permanent endowment foundations.

In 2008 finally endowment funds, inspired by the Anglo-Saxon pattern, were proposed to potential founders. In opposition to the four new kind of foundations above, they are multipurpose or generalist entities. They are very easy to create, without an a priori control of the government and no minimum endowment was initially required.

These new incentives to create foundations show that the state's historical suspicion of foundations vanished. Though the above mentioned change in the foundation statutes and tax encouragements were proposed by right-wing governments, the following left-wing government did not suppress them. The legal vacuum until the end of the 1980s has been replaced by abundance, even overflow, of different legal statutes. Has this change provoked a foundation boom in France, later but similar to what is observed in other European countries?

3. Foundations to-day and recent evolution

3.1 the landscape of foundations to-day

The total number of foundations, including endowment funds, is 4858 in 2017, as shown in Table 1. However, in comparison with 87,000 foundations in USA, 25,000 in Germany, 12,000 in UK, 14,000 in Denmark, 18,000 in Sweden, the French philanthropic sector remains underdeveloped and has not yet caught up its historical lagging behind. Even among the Southern countries, the number of foundations is less than in Italy (6,200) or Spain (8,900)

Table 1 Number of foundations (1990-2017)

Years	1990	1995	2001	2010	2014	2017
Public Utility Foundations (FRUPs)	393	445	471	578	634	638
Corporate Foundations	-	25	67	250	344	400
Sheltered foundations	326	404	571	811	1161	1242
New foundations	-	-	-	47	89	84
Endowment funds	-	-	-	162	1842	2494
Total Foundations and Endowment funds	719	874	1109	1848	4071	4858
Total Foundations, without Endowment Funds	719	874	1109	1686	2229	2364

Source Archambault 2004, for the three first years; de Nervaux (2015 and 2019) for recent years

In 2017, the French foundations assets totalize €26.5 billion, up 31 per cent since 2013. FRUPs hold 75% of these assets. In comparison, the level of foundations total assets is €770 billion in USA and in North-Western Europe: €100 billion for German foundations, € 70 billion for British, 44 billion for Danish and 50 billion for Swedish foundations. In southern Europe, Italian foundations inherited the assets of public banks up to €85 billion and Spanish foundations hold €22 billion assets, with the same order of magnitude than their French counterparts. Foundations have therefore a lesser economic role in France than in other European countries (Jevakhoff & Cavailloles, 2017)

French foundations annual expenditure is €7.4 billion. Expenses of FRUPs, the most ancient part of the philanthropic sector, represent 88% of this total expenditure. They are operating foundations, hiring the bulk of the sector's employees while other foundations – corporate, sheltered or new legal forms—and endowment funds as well, are mainly distributive or grant-making. All kind of foundations hire 86,000 employees. Table 2 breaks down the total number of employees by activities: social services come first, then hospitals and other human health services which was first historically. Education and research, with mainly Pasteur Institute, have a lesser economic weight. Information and communication gather the bulk of grant-making foundations employees

Table 2 Employees in foundations, by activities, 2015/12/31

Activities	Number	%
Social services	39,086	45.6%
Health	27,636	32.2%
Education & research	9,336	10.9%
Information & Communication	6,826	8.0%
Other	2,887	3.3%
Total	85,771	100%

Source INSEE-CLAP Tableaux harmonises de l'économie sociale

To complete the economic model of French philanthropic sector, sources of its income are the following in 2014:

- Investment income: 8%
- Fees and sales, per diem reimbursements and other third party payments: 42% (coming roughly half from the private sector, half from the public sector)
- Public grants and subsidies: 10%
- Private giving: 30%
- Miscellaneous and n e c: 8%

The part of investment income is limited because the assets of French foundations are not very high comparing to their foreign counterparts and part of them is rapidly consumed in grant-making foundations. Of course operating foundations have a higher part of commercial revenue, coming mainly from contracts with the public sector, because they run health, social services or education establishments. Grant-making foundations rely mainly on private and public donations or subsidies.

3.2. Analysis of the recent growth of the foudations

The total number of foundations, including endowment funds, shows apparently a spectacular growth after decades of quasi stagnation. This number was apparently multiplied by seven within 27 years that means an average annual growth during the period of 7.3 per cent.

These figures are in fact misleading. Table 3 breaks down the evolution between two sub-periods, the second one including all the favorable new legislation above described.

The first remark is that endowment funds explain the main part of the acceleration of the 2001-2017 sub period growth. Since 2009 endowment funds mushroomed: easy to create, with no a priori public control and no minimum endowment, half of these funds have no endowment at all! Therefore since 2014 a minimum endowment of €15,000 is required to prevent such empty shells. The average annual growth for the 2001-2017 falls from 9.7 to 4.8 per cent when endowment funds are excluded. For the whole 1990-2017 periods, it is down from 7.3 to 4.5 per cent and the acceleration between the two sub periods is limited.

Table 3 Evolution of foundations : average annual growth during sub periods

	1990-2001	2001-2017	1990-2017
Public Utility Foundations	1.7%	1.9%	1.8%
Corporate Foundations	17.9%	11.8%	13.4%
Sheltered foundations	5.2%	5.0%	5.1%
New foundations	-	8.6%	
Endowment funds		57.7%	
Total Foundations and Endowment funds	4%	9.7%	7.3%
Total Foundations, without Endowment Funds	4%	4,8%	4,5%

Personal calculation after table 1

Regarding the heavyweights of the foundation sector, the public utility foundations, their growth is lesser than all other kinds of foundations and do not accelerate after the 2003 Patronage Act that missed its main target. Potential founders did not choose to create a FRUP despite the higher tax credit, the simpler process and the possibility of giving one year of income through the deferral to five subsequent years of the gift above the threshold.

In opposition, corporate foundations have a two-digit growth rate during the whole period. Corporate foundations do not exist before 1990 and the first sub period beginning from scratch shows its highest level. Companies that create foundations were mainly public corporations, cooperatives or mutual societies. During the second sub-period, private standard corporations benefited more than individuals of the most favorable tax credit in Europe to create corporate foundations. Sheltered foundations continue to grow at the same rate during the two periods and the host foundations multiplied without a shift for more independence towards PUF due to the lowering of the minimum endowment. Finally, new forms of foundations did not explode like endowment funds and remain in a modest number.

To conclude, corporations were no doubt more eager than individuals to benefit of the higher tax benefits provided by the 2003 Patronage Act to create foundations. Despite its recent growth, it is unlikely that French philanthropic sector will catch-up its neighbors' level in the next decade.

4- Hypothetical causes of the persistent disaffection of the French with regard to the foundations

Among the causes of the scarcity of foundations in France cited in Archambault 2004, two of them vanished: on the one hand, state's historical suspicion has been replaced by acknowledgement that "the state has no monopoly on public good", as said Jacques Chirac, prime minister in 1986; on the other hand, the legal vacuum has been replaced by many legal statutes of foundations and funds, unequally easy to create.

However association remains the simplest legal entity to be created and the most independent of the state in its governance and control. While more than 70,000 associations are created every year, it is less than one hundred for endowments funds or foundations. About 1,500,000 associations are spread throughout the French territory when the foundations are less than 5,000, with a high concentration on the Parisian area. French people like and trust associations and dislike or ignore foundations as many polls show it.

In fact foundation appears as an institution less adapted than association to the French culture for several reasons. Firstly, operating foundations are part of the Catholic Church charitable tradition dating back to the Middle-Ages and some of them have kept this religious reference in their title and this is why they are considered by a large part of the French as remains of the past or simply overlooked. Associations are partly relevant to this religious tradition, but their historical background is more complex: they are also heirs of the medieval guilds, 19th Century workers' movements and 20th Century Olympic movement, social protection, minority groups' advocacy and environment defense movements. Secondly, foundations have no democratic governance, based on the principle "one person, one vote in General Assembly, such as cooperatives, mutual societies and associations. That is why it is questionable that foundations belong to the Social and solidarity economy (SSE) as the 2014 Act on SSE decided. According to the CIRIEC perimeter of SSE, only foundations created by its organizations are part of SSE (Chaves and Monzon, 2008 and 1012). Thirdly, the public-private partnership began in the 1960 to 1980 years with the main associations working in the welfare activities: health and social services, education, culture, sports and recreation. Of course operating foundations working in these fields benefited also of public funding, but they were never leaders in the partnerships. In addition, there are no community foundations in France as in other European countries because the central and local governments cannot create foundations. Therefore, large associations play in France the role that foundations do in other European and American countries. However in recent years, some fundraising associations became foundations and this change is encouraged by the 2014 SSE Act.

Table 4 Number of employers establishments and employees in foundations and associations, 2005-2015

Years	2005	2010	2015
Foundations , establishment s	900	1,267	1,568
growth		40.1%	23.8%
Foundations employment	53,844	67,933	85,771
growth		26.2%	27.7%
Associations , establishments	172,463	188,810	186,713
growth		9.5%	-1.1%
Associations employment	1,625,163	1,840,864	1,852,083
growth		13.3%	0.6%

Source INSEE CLAP

Table 4 shows the evolution of the number of establishments with staff in foundations and associations and the number of their employees over the 2005-2015 decade. Obviously, associations have the lion's share in the French nonprofit sector regarding the number of establishments with staff and employees. But foundations are larger—55 employees in average—than associations—10 employees in average—. Foundations are growing quickly over the two sub-periods while associations are growing smoothly during the 2005-2010 sub-period while their establishments decrease and their employees are steady during the 2010-2015 sub-period. Two explanations of this contrasted evolution: on one hand, there is a reduction of public funding since 2010 that impact more associations than foundations who are less dependent on public money. On the other hand, some associations merged to cope with these restricted income, other created endowments funds or foundations to capture donations and a few large fundraising associations changed their legal statute to become foundations, such as *Petits Frères des Pauvres* or *Fondation pour la Recherche sur le Cancer*.

Unfavorable inheritance legislation is also evoked as a persistent obstacle to the creation of foundations by will. If the testator has children, between half and three quarter of her/his estate is reserved for the children, according to their number. Most founders of FRUP or sheltered foundations are alive and they are younger nowadays than two decades ago.

Despite the more favourable attitude of the public powers, resistance to foundations remains in administrative culture and public opinion as well. The idea that state and local authorities have a monopoly on public interest activities remains alive and is detrimental to both corporate and RUP foundations. In administrative culture, however, the Jacobin belief in the superiority of state in provision of medical, social, cultural or educational services is still alive. The traditional view that for-profit enterprises should not engage in activities of general interest continues to prevail as well in administration and public opinion. Endowments to corporate foundations are then considered by a large part of the French population as tax-exempt alternatives to advertising expenses or “social/green washing”. More generally, corporate patronage is seen as an undue levy on resources that could have alternately been spent on wage increases or on taxes financing public services. Even tax credits for households giving can be viewed as gifts to the richer part of the population¹.

- These ambiguous behaviours can be illustrated by the recent controversies on individual and corporate donations to rebuild Notre-Dame cathedral after its partial destruction by fire on April 15th 2019. Notre-Dame is the most popular religious building even for the most secular part of the population² because it is linked to the French history and literature. During the three hours of the burning of the roof framing, built in medieval timber, the bulk of the French were rooted to their TV sets till the firemen said that the main part of Notre-Dame was saved. This time of national union between believers and non-believers was short. The next day, giving pledges flowed towards *Fondation de France* and Heritage Foundation; the richest French people, Arnault (LVMH), Pinault (Kering) and Bettancourt (L'Oréal) gave €100,000 or 200,000 in a competition to be the most generous and the following controversies, in newspapers, the Internet and pubs as well, included at least these two points:

¹ In spite of the fact that tax exemptions to support giving are rather fair in France. In 1996, tax credits replaced reductions of taxable income, unfair with a progressive income tax that gives a larger tax-exemption to the higher incomes.

² France is with Denmark the country where religious observances are the less. Official surveys on religious affiliation are sedom. In the most recent one 45% of the French said that they have no religion, 43% said they are Catholic, 8% Muslim, 2% Protestant, 2% belonged to other religions (Jewish, Orthodox, Buddhist...) (INSEE-INED, 2008)

- - It is easy to find €1 billion in a few days for an historical building famous all over the world and not for the needy population (or the “yellow jackets”) or other less famous parts of our heritage
- - The richest are generous with public money as tax credits are 66% or 75% of their gifts. To reply to this objection, the above cited donors, or their corporate foundations, said that they will waive their tax credits (maybe they were over the cap because of previous donations)

This dispute is specific to a society with a passion for equality and a high level of distrust (Algan,) especially of the wealthiest part of the population. However civil society is a school of trust and citizenship. the recent growth of foundations may be an opportunity for them to be more clearly part of civil society.

5- Conclusion

Though it is unlikely that French foundations will catch up their more advanced neighbour countries in the next decade, there are clear signs of a change in the world of foundations. New foundations are more grant-making and less operating; they are more flow foundations spending a higher part of their assets. New founders are often businessmen having sold their start-up, they are younger and eager to follow by themselves the management and impact of their foundation.

In a country with the highest level of taxes and social contributions, state cannot do everything. Foundations could have a greater role in the detection and the answer to new needs in the field of health, research, education, culture and social services. They could more than they do now help associations to meet their lack of resources and be more efficient. They have to learn to cooperate with public powers at all levels and to acknowledge the legitimacy of elected entities. More community foundations would help to a better knowledge of the administrative culture by foundations and of the hybrid culture of foundations – working for general interest with business management efficiency-- by civil servants. Having to please neither to their shareholders as corporations or voters as central or local governments, and even to their members as associations, foundations can experiment new and unpopular fields, alternatives to jail for example. These innovations if successful could be scaled-up by the state. The mix of the world of foundations with other worlds would benefit to the whole society.

References

Algan Y. (2007) *La société de la défiance* (Editions Rue d'Ulm)

Anheier H.K. and Toepler S. (1999) *Private Funds and Public Purpose, Philanthropic foundations in International Perspectives*, New York, Plenum Publishers

Archambault E. (2004) « Pourquoi les fondations sont-elles si rares en France » in D. Girard Ed. *Solidarités collectives ; famille et solidarités*, Paris, L'Harmattan 2004, P 165-181

Archambault E. (2001) "Country report: France" in Schluter A., Then V. and Walkenhorst P. (2001) *Foundations in Europe. Society, Management and Law*, Bertelsmann Foundation

Archambault E., Boumendil J and Tsyboula S. (1999) "Foundations in France" in Anheier H.K. and Toepler S. (1999) *Private Funds and Public Purpose, Philanthropic foundations in International Perspectives*, New York, Plenum Publishers

Chaves R. and Monzon JL.(2008) *The European Social Economy. Concept and dimensions of the Third sector*, CIRIEC, Annals of Public and Cooperative Economics

Chaves R. and Monzon JL.(2012) *The Social Economy in the European Union*, Report to the European Economic and Social Committee

Facq G, Landais C. Myczkowski A. (2019) *Biens publics, charité privée* Editions Rue d'Ulm

Foundation Center (2019) <http://data.foundationcenter.org/>

INSEE-CLAP (2015) *Tableaux harmonisés de l'économie sociale*

INSEE-INED (2008): *Trajectories and Origins: Survey on the Diversity of the French Population*, INED Population Studies.

Jevakhoff A. & Cavairolès D. (2017) *le rôle économique des fondations*, Paris Inspection Générale des Finances

Observatoire de la Philanthropie (2015) *Funds and foundations in France from 2001 to 2014* Paris , Fondation de France

Observatoire de la Philanthropie (2019) forthcoming

Pomey M. (1980), *Traité des fondation d'utilité publique*, Paris, Presses Universitaires de France

Schluter A., Then V. and Walkenhorst P. (2001) *Foundations in Europe. Society, Management and Law*, Bertelsmann Foundation