

Will Businesses Ever Become Legitimate Partners in the Financing of the Arts in France?

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Abstract

The aim of this paper is to critically assess the content and objectives of the law on patronage and foundations which was adopted on 1st August 2003. More specifically, it will examine the extent to which it can truly encourage companies to become more involved in France's cultural life. After reviewing and explaining the major aspects of the reform and the advantages it is meant to bring to corporate donors, an analysis based on the author's previous work on corporate patronage of the arts in France will be offered. It will argue that the law will be met with little success as it is the author's belief that the basic assumption which underlies the reform is flawed and that it will take more than changes in tax policy to introduce a culture of corporate giving in France.

Keywords

France, corporate patronage, arts, law, tax relief

Introduction

On December 17th, 2002, the French Prime Minister, Jean-Pierre Raffarin, presented twelve measures to reform patronage and foundations in France. These measures called for better tax incentives for private donors (individuals and corporate donors), more favourable tax treatment for foundations, and simplification of the creation and operation of public utility foundations. To many observers, the reform was in direct line with the speech President Chirac had given in April 2002 in which he had renewed his plea for more freedom of initiative and an increased involvement of all citizens in actions of general interest. As a sign of its determination, the Government made sure that the taxation proposals would be swiftly reviewed and amended by the Parliament and the law on patronage and foundations was adopted on 1st August 2003.

The aim of this paper is to critically assess the content and objectives of a reform which has been hailed by its promoters as a major leap forward in the encouragement of tax effective giving in France. More specifically, it will examine the extent to which these measures can truly encourage companies to become more involved in France's cultural life.

After reviewing and explaining the major aspects of the reform and the advantages it is meant to bring to corporate donors, an analysis based on the author's previous work on corporate support of the arts in France will be offered (Morel, 2002). First, it will show that, although the new tax measures are presented as a breakthrough, they constitute, in

effect, a renewed attempt to make existing legislation more enticing. As such, they can be regarded as yet another step in a process which started several years ago. A short historical account will demonstrate that even though the involvement of the private sector in the support of the arts has been on the agenda of various French governments over the last forty years, the development of adequate and effective measures to encourage such an involvement has been difficult and erratic. Thus the major laws drawn up by the French legislators were so restrictive and confusing that they rapidly proved unworkable and had to be altered several times. As a result, corporate giving and involvement in actions of general interest continue to remain marginal as less than 1,200 companies were involved in patronage in France in 2000 and the total of their donations amounted to 343 million euros in 2002 (Briard, 2004). Those limited results certainly motivated the decision by Mr Chirac's government to launch new measures to foster patronage and develop private foundations. However, the question of why such measures should succeed where the previous ones failed needs to be addressed.

In the second part of this analysis, it will be argued that the recent reform of patronage and foundations will be met with little success. It is the author's belief that the basic assumption which underlies the reform is flawed and that it will take more than changes in tax policy to introduce a culture of corporate giving in France.

The New Measures Concerning Companies and Foundations

The major breakthrough of the law of 1st August 2003 is certainly the tax bonus offered by the French Government to corporate patrons. Up to then, article 238 bis of the general tax code allowed any sum donated to be deducted directly from the companies' taxable income (up to the limit of 2.25 or 3.25 per thousand of the turnover according to the status of the beneficiary) thus reducing their income tax liability. From 1st January 2003 onwards, 60 % of the donated sum will be deducted directly from the amount of payable taxes (up to the increased limit of 5 per thousand of the turnover). In effect, the new law is almost doubling the tax relief offered to corporate patrons.

If we take the example of a company making a donation of 400 euros, here is how much this company would have paid in taxes before 1st August 2003 and how it will now pay:

Before 1st January 2003

Taxable earnings	1,000 euros
- Donation	400 euros
= tax liability	600 euros
Tax rate (33.3 %)	
= Amount of tax to pay	200 euros (33.3 % of 600)

After 1st January 2003

Taxable earnings	1,000 euros
Tax rate (33.3 %)	
Tax liability	333 euros (33.3 % of 1,000)
- 60 % of donation	240 euros (60 % of 400)
= Amount of tax to pay	93 euros (333 – 240)

The same kind of calculation applies to State purchases of works of art considered as National Heritage. Companies can deduct 90 % of this sum from their payable taxes. As

purchasers of art, they are allowed to subtract 40 % of given sum from their payable taxes.

The second major aspect of the new law concerns foundations. When companies contemplate setting up a foundation in France, they are faced with three choices. The first is the **Fondation reconnue d'utilité publique** (FRUP) whose status was originally set by the law of 23rd July 1987. It is a permanent foundation whose special status can only be granted by the *Conseil d'Etat* and which, originally, had an endowment of at least five million francs (762 200 euros). Since very few companies could afford to spend so much money on a foundation or waste 18 months to receive the State Council's agreement, there are less than 500 FRUPs in France today (Archambault, 2003, p.68) despite the privileges attached to them such as the possibility to receive donations.

In an effort to offset the rigid nature of this procedure (and put an end to the abusive use of the word foundation by certain businesses), the law of 4th July 1990 let companies set up their own business foundation. To create a **Fondation d'entreprise**, a company was required to draw up an action plan over five years with a minimum budget of one million francs (152440 euros) and with an initial endowment of minimum one fifth of this budget. The minimum life span of five years could be extended by a further five years thereafter. A *fondation d'entreprise* could not receive donations. Although welcoming the changes brought to the law of 23rd July 1987, businesses still felt (and rightly so) that business foundations were cumbersome to set up. The law on museums of 4th January 2002 tried to address some of their concerns. In particular, the life span of business foundations was reduced as the renewal period has been shortened from 5 to 3 years. Moreover the initial endowment is no longer necessary.

The third solution for companies that want to have a foundation is to entrust institutions such as the *Fondation de France*, the *Institut de France* or the *Fondation du Patrimoine* (all of which are FRUPs) with a certain amount of capital and let them manage the funds provided. In exchange, they receive the title of **Fondation sous égide**. There were 56 of them in 2001 (Archambault, 2003, p. 74).

The law of 1st August 2003 seeks to offer yet more flexibility to foundations. Thus it has reduced the authorisation process from 18 to 6 months for FRUPs and has offered them further tax relief measures. As to business foundations, they can now receive donations from the founding company's employees.

Other more informal measures of the reform include: a department dedicated to patronage at the Ministry of Culture to coordinate communication and information campaigns and a partnership agreement with *Admical* (*Association pour le Développement du Mécénat Industriel et Commercial*), a private organisation which has been lobbying for the development of patronage under the leadership of Jacques Rigaud for the last 25 years. A glossy information brochure has been released and a special annual award for outstanding business patrons has been (re) introduced. Moreover a "Mr Mécénat", François Erlenbach, has been appointed and DRACs (*Directions Régionales des Affaires Culturelles*) which, so far had never played a major role in the development of corporate patronage of the arts, have been asked to act as facilitators between the worlds of arts and business.

The official objective of the reform is to give companies "their freedom to participate in major national causes, and to point out that the State does not have the monopoly of the general interest" as explained by the Minister of Culture, Jean Jacques Aillagon, in his speech of 17th December 2002. The law has also been designed to help France catch up with benchmark countries such as the United States or the UK, regularly presented as the champions of corporate philanthropy. On reading the arguments put forward and the

measures described by the Ministry's press releases, a close observer of *mécénat* in France cannot refrain from a feeling of *déjà vu* as the next part of this paper will show.

An Historical Perspective on Corporate Patronage of the Arts in France

The interest of the Ministry of Culture in corporate patronage dates back to 1965 when Malraux, who had been Minister of Cultural Affairs for the last six years, wrote to the Vice President of the *Conseil d'Etat* : '*Je me préoccupe de provoquer en France un véritable mécénat culturel à l'exemple de ce qui existe à l'étranger et particulièrement aux Etats-Unis*' (quoted in Cabanne, 1981: 202). A few months later, Michel Pomey, a senior civil servant at the *Conseil d'Etat* flew to the USA to carry out a comparative survey between French and American foundations. Pomey's findings confirmed the enormous gap which has always existed between the two countries: if the USA at the time could boast 15,000 foundations with an average of 1,200 to 1,500 new ones created each year, France had 250 foundations, most of them not particularly active. At that time, Pomey indicated two major factors to explain the weakness of French foundations (Pavillon, 1995: 21). First, there were the notoriously stringent legal conditions involved in the setting up of a foundation. Historically, foundations had been banned in France by the *Loi Le Chapelier* in 1791 but had been reintroduced in 1805. However since then, they were controlled by article 910 of the *Code Civil*, which stated that they needed to be authorised by the Government after consultation of the *Conseil d'Etat*, which was responsible for checking that they met the criteria of public utility (*utilité publique*) and general interest (*intérêt général*). Secondly, there was the question of taxation, which was far from enticing. Thus, in France, according to Pomey, a private individual donor giving money to a foundation could subtract a maximum of 0.5 % from his total taxable income whereas in America this figure reached 25 % to 30 % (Pavillon 1995: 22). As for corporate donors, the law of 11th August 1954 (codified in art 238 of the general tax code) stated that companies could deduct the donations made to associations of general interest from their taxable profits within the limit of 1 ‰ of their turnover.

To remedy this situation, Michel Pomey recommended the creation of a large grant making foundation (inspired by American community trusts), which would collect and manage money from various donors or benefactors and would then distribute funds in the form of grants to associations serving the general interest in various fields (Pavillon, 1995: 30). His work led to the creation of the *Fondation de France* in 1969. In many respects, Pomey's project was very innovative: not only did it introduce the completely alien notion of a trust in the French legal system but it also recognized the right for private citizens to participate in the nation's cultural life. However, he never questioned the complete lack of flexibility of French foundations and the strict control imposed on them by the state (Brébisson, 1993: 79). In reality, he probably did not trust private donors' cultural tastes and in particular that of business people. Thus he wrote to Malraux: '*Nos chefs d'entreprises sont bien loin d'avoir le sens de ces choses ou pire encore, ils croient l'avoir*' (1993: 41).

Jacques Duhamel (Minister of Cultural Affairs from January 1971 to April 1973) also attempted to involve the private sector in the financing of the arts. Coming into office after the social unrest of 1968, he had to show that people's demand for pluralism and call for change had been heard and that the state had modified its approach to civil society. In particular, the Ministry of Culture, in total rupture with what had been done so far, would not impose its views but would cooperate and enter contractual agreements with other ministries, associations and local authorities (Perret and Saez, 1996: 15). Partnership and dialogue became the new catchwords and it was only logical that

attempts should be made to involve businesses as well. However, Jacques Rigaud, Duhamel's closest collaborator at the time recalls that Duhamel's democratic ideas in terms of culture were a bit too forward looking for the business community, which was probably not ready for corporate patronage yet.

Some years later, corporate patronage found another advocate in the person of Jean-Philippe Lecat, Secretary of State for Culture and Communication (April 1978-March 1981). So serious were his intentions that he asked for the first study on corporate patronage and had the results published in a brochure called *Le mécénat en France*, which was released nationally in July 1980. In the introduction, Lecat explained that the aim was to '*reconnaître l'action culturelle sous tous ses aspects comme l'une des responsabilités sociales des agents économiques [...]*' (Monin, 1986: 6). The same year, Lecat, a history buff, also launched the *Année du Patrimoine* with the aim of boosting the French public's interest in national heritage and involving companies in its conservation. Lecat was genuinely convinced that companies could play a role in the rehabilitation of France's historic monuments and that private money should not be considered as suspicious or pernicious (Cabanne, 1981: 395). It was he who introduced a reward to acknowledge and pay tribute to corporate patrons for their support of the arts. Nevertheless, once again, Jean-Philippe Lecat's innovative ideas were met with scepticism as they were thought to be the result of his ministry's lack of means and of the right wing liberal ideas prevailing in the Barre government (Urfalino, 1996: 275). Indeed by showing interest in corporate patronage, Lecat brought fears of a commercialisation of culture (Looseley, 1995: 54).

1982 saw an unprecedented increase in the Ministry of Culture's budget whose share of the national budget rose from 0.47 % in 1981 to 0.76 % (Farchy et al 1994: 65). This was all the more spectacular a gesture as France was entering a period of economic recession. The Socialist Minister of Culture, Jack Lang, justified this move by the role that culture could actually play in boosting the French economy (Looseley, 1995: 82). During the years to come, Lang was to become the champion of the reconciliation between business and culture. Hence his motto '*économie et culture même combat*' which fitted perfectly well with the acknowledgment of the laws of the market by the Mitterrand Government in 1983. As a consequence of this coming together of arts and business, corporate patronage was actively promoted (Perret et al 1996: 17). Mr. Lang frequently emphasized his belief in plural funding as a guarantee of freedom in the arts and described it as '*l'oxygène de la création*' (Brébisson 1993: 85).

Mr Lang pushed two fiscal reforms to encourage corporate patronage in 1985. The first one doubled the ceiling for tax deductions from 1 to 2 % of the taxable profits. However, in order to get a tax rebate companies had to go through a certain number of hurdles. Their support, for instance, had to go to '*fondations ou associations, d'intérêt général, à caractère culturel, agréées conjointement par le Ministre de l'Economie [...] et le Ministre de la Culture*'. The second law (law of 11th July 1985) gave the opportunity for companies and private individuals to buy shares in *Société de Financement des Industries Cinématographiques et Audiovisuelles* (SOFICA), a special type of private company specialising in cinema production and whose status allows private investments to be tax-deductible (Renard, 1987: 215).

The elections for the Assembly on 16th March 1986 brought the right wing parties back to Government. Their manifesto stated that corporate patronage had to be encouraged by the State and acknowledged the will for companies to play a social role: '*L'Etat doit favoriser le développement du mécénat non grâce à un simple mécanisme d'exonération fiscale, mais en le reconnaissant comme l'exercice normal d'une responsabilité sociale*' (Wangermé et al 1988: 47). This was a typical liberal discourse calling for less state intervention in culture but also a perfect illustration of the growing

trend for companies to become “corporate citizens”. The new Minister of Culture and Communication, François Léotard, asked for an official report on corporate patronage, which was drawn up by the managing director of *Cartier*, Jean-Dominique Perrin. The choice was clear and symbolic. This time it would not be a senior civil servant but a high-profile businessman who would write about corporate patronage. His report contributed to the passing of the first ever law on *mécénat* i.e. the 23rd July 1987 law. It was also in 1987 that the *Conseil Supérieur du Mécénat Culturel* was founded to advise the Government. It recommended the introduction of a new experimental matching grant scheme to foster joint financing between the State and the private sector. Under this scheme, the state could decide to take part in the financing of a cultural project when money had already been forthcoming from the private sector. However the *Conseil*’s lack of means and clout rapidly cast doubt on its effectiveness (Djian, 1996: 118). By 1991, it has ceased to exist. As to the scheme it was abandoned in the mid-Nineties.

The 1987 law on *mécénat* rapidly proved unworkable and two legal texts had to be introduced by the *Direction Générale des Impôts* (DGI) in 1988 to refine some of its terms. Moreover, as already mentioned, the law of 4th July 1990 was passed to introduce a more flexible form of foundation (the *fondation d’entreprise*) as FRUPs remained out of reach for most companies.

The report drawn up by Alain Grangé Cabanne in the mid-nineties underlined l’*enfer législatif* (1994: 50) that the passing of various texts and laws had created and the cruel lack of results brought by these various measures. In reality, as noted by Grangé-Cabanne, behind the official objective of encouraging corporate patronage, the 1987 law had three different aims (1994: 105) : to enrich the public collections of art (protection of heritage); to encourage contemporary artistic creation; and to bring art to the public (democratisation). It is therefore unsurprising that so few companies rushed to take advantage of a scheme which was clearly designed to serve the Ministry’s own objectives whilst granting very few advantages to private donors. Similarly, Archambault shows that the restrictive nature of the various laws prevented France from catching up on the number of foundations in contrast with what happened in the UK or Germany in the Eighties (2003, 71).

Apart from the law of 2nd July 1996 which initiated the creation of *La fondation du patrimoine* whose aim is to encourage companies and individuals to contribute to the preservation of non-listed buildings, very little was done to boost corporate patronage at the end of the nineties. The few incremental changes which were brought to the practicalities of corporate patronage went relatively unnoticed. Thus, the ceiling for deductions from taxable profits, for example, was “generously” raised from 2 to 2.25 ‰ of a company’s turnover in 1996 and the 2000 budget law modified art 238 bis to allow tax deductions to be made from taxable income instead of taxable profits (in other words a company running losses can still take advantage of a tax incentive).

Therefore it would seem that the law of 1st August 2003 has been designed to re-launch a process which somehow over the years has gradually come to a halt and whose results have remained extremely limited.

The picture which emerges from our short historical account is that of a series of laws on corporate patronage passed to suit the Ministry of Culture’s own objectives whilst minimizing the Ministry of Finance’s loss of tax revenues. Indeed, the low upper limits on the amount of allowed deductions show a will to place a cap on tax revenues lost through this kind of incentive (Schuster, 1986: 324). As to the determining of an extremely precise range of institutions eligible to receive tax-assisted charitable contributions, it is explained by the will to channel the money into very precise projects and to leave very little initiative to businesses. In effect, the companies that have made

the most of these laws are usually large companies which were or have been close to the State and which, usually through their own foundations, have carried out what could be regarded as an “externalised state patronage” (Rozier, 2003:59). They have been helped in the process by Admical which, to a certain extent, can also be considered as an extended arm of the Ministry of Culture.

This historical review also raises a certain number of questions as to the future of the 2003 law and its chances of success. It seems hard to believe that a law passed under the same conditions and presumptions as its predecessors will succeed where they failed. Even though the tax breaks offered have never been so generous, can the usual top-down approach and emphasis on taxation manage to trigger corporate patronage of the arts? In the next part, some of the results of the qualitative study developed within the framework of our PhD will be used to investigate the relevance of using tax breaks to increase corporate patronage in France.

The Relevance of Tax Breaks as an Incentive for Corporate Support of the Arts.

The case study we developed to investigate corporate patrons’ motivations involved seventeen companies engaged in the support of the arts through various ‘clubs’ of corporate patrons in the French northern city of Lille. Over the last ten years, the Northern metropolis has succeeded in putting itself on the cultural map of France by investing heavily in the renovation of existing cultural equipment. It has managed to shed its image of a bleak industrial city and to successfully regenerate itself into a European hi-tech financial and business centre that enjoys excellent cultural facilities including several museums, a theatre, an opera house. Confirmation of this status came when, Lille was chosen to be the European City of culture for 2004.

Semi-structured interviews with the Chief Executives (or Head of Communications) of the seventeen art supporting companies were organised during the summer of 2001 with the objectives of determining the reasons why those companies had carried on with their support of the arts whilst so many had given up.

When asked about taxation, all respondents agreed that tax discounts were far from being their first motivations for engaging in corporate patronage. As noted by one Head of Communications, taxation *‘n’est pas un point d’entrée’*. However, a majority of respondents admitted that, after supporting a project, their accounting department would check whether their action qualified or not for a tax rebate as acknowledged by another Head of Communications: *‘Tant mieux si on peut défiscaliser mais c’est pas le but premier’*.

The fact is that most of them (with two exceptions) could not tell which tax regime (between that of *mécénat* and that of *parrainage*) had been applied to their donation and ignored the corresponding qualifying criteria. This confirmed the results of the *Union des Annonceurs* (UDA) survey (1998) which showed that almost a quarter of their respondents knew nothing about tax provisions for corporate patronage. This lack of information and interest about tax matters among our Lille respondents was most certainly genuine. It could also be that they knew that managers’ decisions are usually perceived as being mainly motivated by money considerations and that they wanted to detach themselves from this materialistic image. To admit that their generosity could also help them save some money would have been an open invitation to criticism and reprobation. It could have cast a shadow on their true motivations and on the choices they had made as to the projects they had chosen to support. Indeed, if a company’s

first motivation is to obtain a tax discount then any project can do and its credibility will eventually be lost. This was strongly put across by one Head of Communications who commented: *‘Si on commence à avoir une politique de mécénat parce que ça rapporte, là, dans ce cas, on fait n’importe quoi’*. In fact, there was almost a tone of contempt for people or companies who would give money to a project in order to get tax discounts. Chief executives, in particular, were strongly against patronage being carried out solely for tax purposes. The assumed pursuit of tax rebates was used to disparage the attitude of other corporate donors: *‘Je suis pas sûr qu’ils fassent tout ça sur des coups de coeur. Il y a certainement un impact fiscal fort’*, declared the Managing Director of a regional bank.

This attitude towards tax rebates can seem surprising since the literature on patronage and various lobbies have always insisted that better tax breaks would enable corporate patronage to grow in France. Some interviewees (mainly Heads of Communications) did admit that better tax discounts could help them justify the use of patronage and convince their reluctant Chief Executives, who want something in return for their financial support. One of them declared: *‘Ça permettrait aux responsables de mécénat et de communication de vendre un peu plus le mécénat à leurs patrons, d’avoir un dossier un peu plus bouclé’*. In other words, the tax argument would be used to get the green light for an already existing project.

Interestingly enough, the American example was often quoted during discussions on the tax aspects of corporate giving. It was usually praised by the respondents who saw in higher tax discounts the reason why their American counterparts were more generous. That was one PDG's opinion: *‘Dans les autres pays du monde, enfin ceux où ça se pratique beaucoup, aux Etats-Unis et en Angleterre [...] les régimes sont plus favorables. Ça peut jouer un peu’*. However, usually in the same breath, they would also explain that their engagement in corporate patronage had never been linked to any tax consideration and that it would and should not be!

At this point in the discussion, it seems crucial to introduce the notion of disinterestedness to understand companies' ambiguous attitude towards tax breaks. By using terms such as *mécène* or *mécénat* to describe their patronage companies have tried to capitalize on the attached value of generosity. This was noted by their detractors: *‘En invoquant le nom de Mécène, les entreprises aujourd’hui se donnent une aura d’altruisme’* (Bourdieu and Haacke, 1994: 26). However companies probably underestimated the extent to which their support would, as a consequence, be judged on the nature of their intentions. Generosity has traditionally been linked to disinterestedness and donors should never expect anything in return for their gift if they want their gesture to be regarded as genuine and sincere. Hénaff's work on giving clearly traces the roots of such a belief. The author demonstrates that the concept of gift has evolved from being a social act of acknowledgement to an individual moral act. Over the centuries an ever-growing attention has been paid to the purity of the donor's intentions and motivations in the act of giving (2000: 53).

It is interesting to note that French legislators largely drew on the Christian conception of generosity when they released the initial texts on corporate patronage insisting that only the absence of direct returns would grant the higher tax breaks and the name of *mécénat*. In fact, even the latest law of 1st August 2003 mentions that the advantages received by businesses when supporting the arts must be markedly disproportionate to the initial sum they paid in order to qualify for the 60 % tax incentive.

So, although acknowledging that more alluring tax incentives could encourage corporate patronage, no Lille interviewee mentioned tax rebate as a prime motivation for their

support of the arts as they certainly did not want their generous gesture to be tarnished by allegations that they did it to pay less tax.

Conclusion

Although it could be argued, together with the promoters of the new reform of patronage, that the long-standing US tax treatment has fostered a culture of giving, and that France, which is in the process of offering similar generous terms, needs time to achieve results, the role played by cultural factors to explain the weaknesses of French corporate patronage should not be underestimated. Each country has its own model of corporate philanthropy which is built around its culture, its social and political organisation and which is based on different historical patterns of patronage. This paper has tried to highlight how the French legislator has managed to keep societal actors such as businesses under tight scrutiny when they want to engage in actions of general interest and how moral notions such as generosity and disinterestedness have an enduring influence on corporate giving today. As a consequence, the uneasy attitude of businesses toward tax incentives granted to corporate patrons will probably reduce their effectiveness. The solution might lay in the development of a French model of corporate patronage which would not simply try to emulate the American or British one but would take the specificities of French society into account.

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