

## "Those barbaric Germans": the vision of some jurists

<http://expo-grande-guerre-biu-cujas.univ-paris1.fr/en/those-barbaric-germans-the-vision-of-some-jurists/>

This article aims to shed some light on the jurists who, during the First World War, relayed their hostility towards Germany articulated around the idea that the Germans were barbarians. Of course, this was not the case for all jurists, far from it. But among these professors, lawyers, magistrates, some moved away from a legal analysis to a moral anathema.

Nor can it be claimed that it was a notion specific to jurists. On the contrary, one can find many writings of historians, philosophers and sociologists advancing the idea that the Germanic enemy was savage and cruel. But precisely, legal specialists were not really among the most committed intellectuals, who became involved in the conflict from the tip of their quill. And yet, jurists sometimes went beyond the limits of what was commonly accepted as a legal study to settle into the field of diatribe.

Circumstances seemed to disinhibit some authors, who cared little to moderate their remarks. The expression of patriotism, admittedly legitimate, seemed to allow them to make sometimes virulent or even violent remarks. Among all that was reproached to the Germans, an antiphon consisted in claiming that they were barbarians and, remarkably, that this was inscribed in their genes in some way. From the relatively anonymous lawyer to the well-known professor, manifestations of this state of mind can be found throughout the conflict and even as late as the early 1920s. Some illustrations chosen from the main [legal journals](#) of the time can prove it.

### The civilized world *versus* German barbarism

In the *Revue générale du droit de la législation et de la jurisprudence en France et à l'étranger* (RGD, Eng. General Journal of the law of legislation and precedents in France and abroad), Parisian lawyer Joseph Lefort repeatedly spoke out against German savagery. In 1915, for example, he denounced the impudence and lying spirit characteristic of the Germanic race, its pride, rapacity and cruelty. He stated that "tout Allemand est un espion, il ne vient dans un pays que pour moucharder et voler [every German is a spy, he comes to a country only to snitch and steal]" (account of *Who is responsible? The European War, its Causes and Sanctions* by Cloudesley Brereton, RGD, 1915, pp. 455-465).

As part of a review, Lefort further explained how some German scholars have "mendié la sympathie française [begged the French sympathy]", in other words their maneuvers to be published in certain journals or named correspondents of the Institute. According to him, these requests were "exprimées dans des termes qui auraient répugné à des personnes d'une autre mentalité. Mais ils ne faisaient que suivre certains modèles, comme par exemple celui de Mommsen, dont le caractère était de beaucoup inférieur à la science si profonde [expressed in terms that would have been repugnant to people of another mentality. But they only followed certain models, such as that of Mommsen, whose character was far inferior to so profound a science]" (report of several works by different authors entitled "Germany and the international law", RGD, 1915, p. 143). He even evoked composer and playwright Richard Wagner, accusing him of ingratitude, since after having received a warm welcome from France, he would have ridiculed it in one of his works.

The vocabulary could sometimes take religious accents under the pen of the jurists of the *Revue générale*, as one of them called for the "châtiment et à l'expiation [punishment and atonement]" of the German nation, for "châtiment [...] même par contumace [punishment [...] even in absentia]" (E. Thunot, report of *The Laws of War (War on Land), their systematic violation by Germany, reparation and sanctions* of J. Champcommunal, RGD, 1916, p. 122-123).

The "German cruelty" was evoked by the same author, post-war, when it was a question of the "martyr des Alsaciens [qui] atteignit les limites de la plus tragique horreur [martyr of the Alsations [which] reached the limits of the most tragic horror]" (E. Thunot, reports of *The devastated Lorraine* by Maurice Barrès; *Repatriates 1915-1918* by Léonie Chaptal; *France and Belgium* by Madeleine Saint-René Taillandier; *L'Alsace et la guerre* by Émile Wetterlé, RGD, 1920, pp. 131-132).

In another collection, the *Revue générale de droit international public (RGDIP)*, Eng. General journal of international public law), the terms "atrocities" to describe acts of war (RGDIP, 1914, p. 83, 299, 218, etc.) and "barbarism" or "barbaric" (RGDIP, 1914, p. 76, 188, 230, 297, 332, etc.) recur countless times. Moreover, these words can be found on official documents emanating from the highest authorities of the State, as evidenced by extracts from reports submitted to the President of the Republic (RGDIP, 1914, pp. 247-248).

In 1915, J. Perrinjaquet, former lecturer of law faculties and substitute in Libourne, wrote that "la guerre actuelle a même pris un caractère de brutalité et de sauvagerie inconnu depuis l'Antiquité et qui constitue un retour à la barbarie des peuples primitifs sous prétexte de propagation de la « Kultur [the present war has even taken on a character of brutality and savagery unknown since the ancient times, and which constitutes a return to the barbarism of primitive peoples under the pretext of the propagation of "Kultur]" ("The European War", RGDIP, 1915, p. 150). He went on to declare that "l'amirauté allemande sera maudite par toute nation civilisée, en raison des atrocités commises par ses sous-marins [the German admiralty will be cursed by every civilized nation because of the atrocities committed by its submarines]" (p. 238) and blames the "barbarie cynique [cynical barbarism]" of Germany (p. 238).

In the same year, professor of international law Paul Fauchille (1858-1926) put himself on the same register to denounce the "atrocités allemandes [German atrocities]" ("The German attacks against property and people in Belgium and France", RGDIP, p. 256) and the "la formule barbare [barbaric formulation]" within the proclamation of a German general (p. 379).

In 1916, another professor, the famous Paul Pic (1862-1944), delivered to the magazine a long legal and technical article. But within these elements of analysis, there were also some attacks opposing the civilized world to that of the barbarians. Let us judge by this: "le monde civilisé a été douloureusement surpris des scandaleuses et brutales violations du droit [the civilized world was painfully surprised by the scandalous and brutal violations of law]" committed by the Austro-German troops, who were therefore *de facto* not part of the said civilized world ("Systematic violation of the laws of war by the Austro-Germans. Necessary Sanctions", RGDIP, 1916, p. 243). He went on to say that while "qu'ils se présentent comme représentants d'une civilisation supérieure [they presented themselves as representatives of a superior civilization]," the Germans "par leurs actes déshonoré l'humanité [by their deeds dishonored humanity]" (pp. 243-244). And to add, cheerfully crossing the borders of an academic article: "ils se sont ravalés dans cette voie au niveau des Kurdes, ce peuple de brigands à la solde du Sultan [they have fallen to the level of the Kurds, this people of robbers paid by the Sultan]" (p. 244).

The lawyer then stroke in all directions: " l'odieux des atrocités allemandes [the odiousness of German atrocities]" (p. 244), " des scènes de barbarie, froidement préméditées [scenes of coldly premeditated barbarism]" (p. 248), " actes de cruauté [acts of cruelty]" (p. 249). He vituperated against the " l'infamie teutonne [Teutonic infamy]", the " scènes horribles [horrible scenes]", the " ignominies [ignominies]" and the " doctrines brutales du grand État-Major allemand [brutal doctrines of the German General Staff]" (p. 253.) Only surrounded by such remarks would the author will still engage in a legal and detailed analysis on Germany's violation of [international laws](#) of war.

Jurists thus took up a dichotomy that flourished among French intellectuals during the first conflagration: civilization *versus* barbarism. The " haine du Boche [hatred of the Boche]", to use the expression of Jean-Jacques Becker shared at the time by a very large fraction of the population, was therefore sometimes also expressed by jurists, who used racial arguments to reinforce this *doxa*.

### Racial rhetoric

The Germans were therefore brutal, violent, savage, cruel, barbaric. Why was that? Some French jurists argued that their behavior was part of their history, albeit sometimes distant, and therefore inherent in their nature. To put it with the authors, it was the " race germanique [Germanic race]" itself that was at stake.

Joseph Lefort, whom we have already come across, thus invoked anthropology to assert that " la violence est inscrite dans le cerveau german [violence is inscribed in the German brain]" (report of *Germans before History* by Jacques Hillemecher, *RGD*, 1920, pp. 277-280).

Similarly, Toulouse legal historian Joseph Declareuil (1863-1938) expressed himself on this subject in the *Revue du droit public (RDP)*. The professor analyzed the famous Speech to the German nation (*Reden an die deutsche Nation*, Leipzig, Verlag Ph. Reclam Junior, n.d.) by German philosopher Fichte (1762-1814); a speech given after the defeat of Jena in 1807. This text, considered as one of the theoretical foundations of Pan-Germanism, is also one of the foundations of German nationalism. Adopting a tone sometimes vehement, Joseph Declareuil attacked the German historians who had distorted the facts to glorify "the German race" and then denounced an ideological enslavement of history in the service of political pretensions ("Le discours à la nation allemande de J. Gottlieb Fichte" [J. Gottlieb Fichte's speech to the German nation], *RDP*, 1917, p. 367). Going even further, he challenged the idea that the German people were a pure race (p. 380) and downplayed the consequences of the Germanic settlements in Gaul (p. 381-400).

In 1917, it was the same vein that irrigated the article of the Toulouse professor [Alexandre Mérignhac](#) (1857-1927), who taught public international law. In a study delivered to the *Revue générale du droit international public*, innervated by the semantic lexicon of barbarism, he wrote: "it is not proper to wage a barbaric war, even against barbarians" because it "does not suit the loyal and generous character of civilized races who must assert their intellectual superiority by acts and not by empty phrases" ("Sanctions for Violations of the Law of Nations Committed during the European War", *RGDIP*, 1917, pp. 17-18). He even invoked history by considering that it was necessary to let "the barbarians aim for Saint Mark... let us not sully our age-old reputation with a vandalism that history will wither with horror and disgust" (p. 18).

The future would therefore bear witness to German barbarism, just like history, which bears the irrefutable marks of the constancy of this brutal behavior. This was the opinion defended at the end of the war by Parisian professor Louis Le Fur (1870-1943). A profoundly Catholic jurist, Le Fur attacked Luther by considering that "his lack of measure" was a "trait of race" ("Just War and Just Peace", *RGDIP*, 1919, p. 13). His point of view was clearly stated: it would be wrong to think that German brutality was a new thing. On the contrary, it had already been embodied in "the brutal force of the Germans who had struck the Romans" (p. 19.) He was clear in his views: "This is clearly a racial feature, the manifestation of a barbarous and coarse nature" (p. 19). He mobilized the notion of race for another purpose: to discredit the thesis that the Germanic race is the chosen race (p. 40). He even went so far as to deny its "purity": indeed, the Germans would be "the least Germanic race possible" p. 49).

However, he did write later that "from the point of view of law, both internal and external, race does not exist as a positive reality" (p. 393); this does not prevent him from concluding that "the League of Nations, even once endowed with the means of action which it lacks, will not make the instincts of robbery and cruelty of certain races disappear forever" (p. 403).

With arguments of the same ink, a character draws attention by the number of interventions whose vehemence sometimes leaves the reader dumb. That is [Jacques Flach](#) (1846-1919), lawyer, professor at the Collège de France, specialized in history and comparative law, an Alsatian who chose French nationality during the annexation of Alsace. In 1915, he published three texts, a brief summary of which must be attempted. In his *Essay on the Formation of the German Public Mind*, the author aimed to retrace the origins of German "barbarism" (*Guerre de 1914. Tenin Collection*, Paris, Sirey, 1915, p. 10). The lexical field of morality is omnipresent: it evokes, for example, the "barbaric ferocity" (p. 19) or "the pride, as interested as it is ferocious, of the German" (p. 65) "who delights in a web of lies" (p. 73). He wished to assert one idea in particular: that Germans were organically bad; this he wished to demonstrate in a chapter devoted to "Teutonic vanity" (pp. 57 et seq.). History was summoned to prove this idiosyncrasy: going back to the medieval French kings, valiant fighters of German imperialism, it opposed French honor and German vanity (p. 65). Moving into anthropology, he cited the works of Gobineau and Vacher de Lapouge to judge that the "the Teutonic race is not the purest survival of the Aryan race" (pp. 80-81).

The same phraseology can be found in another of his communications entitled *The Law of Force and the Force of Law: Germany Engaged in a Race Struggle* (*Guerre de 1914. Tenin Collection*, Paris, Sirey, 1915, pp. 5-6) and uses history to base its policy of force (pp. 8-9).

The author's aim is very clear: to denounce German historical "falsifications" and to re-establish a historical truth that demonstrates the very deep implantation of German brutality, with detectable germs already in the Middle Ages. This rhetoric is found in other jurists of the next generation. Thus, professor at the Lyon Faculty of Law René Gonnard (1874-1966) believed that Germany was "hateful, resentful and jealous, devoid of proper qualities, always late, 'aping' more original and more cultured peoples, as old Germany with its Holy Empire aped the Roman Empire" ("Germany seen from France: considerations about some recent French works on Germany", *Revue politique et parlementaire*, 1914, pp. 160-161). Again, we find this anchoring of contemporary reality in the Holy Empire: nothing has changed in centuries and Germany has always been an enemy.

In this perspective, the story is then convened, because it sums up a number of representations, sometimes

stereotyped. It therefore makes it possible to inscribe them in durability; which increases their legitimacy and would prove their veracity.

The tone was sometimes just as vehement, or even more so, within legal collections that convey a marked ideology. This is the case of the *Revue catholique des institutions et du droit* (*RCDID*), which displays its affiliation in its very title. There are, for example, two articles reproducing the opposition of civilization and barbarism. In 1914, Emmanuel Lucien-Brun wrote that France "is stunned to see again, in a century of refined civilization, the acts of barbaric centuries" ("The world war", *RCDID*, August 1914, p. 111).

Same tone in an article he delivered to the collection the following year. Again, we find the term "barbarian" and this same use of history to establish a correlation with the barbaric peoples of the early Middle Ages: "there is more to be feared in remaining in a region invaded by the Germans, than there was fifteen centuries ago, in suffering the invasion of barbaric peoples" ("Regarding the war", *RCDID*, September 1915, p. 300).

In the same year, 1915, a study was eloquently entitled "Civilization and barbarism". It emanates from a certain G. Théry who clearly set out the terms of the debate: "It is often said: the Germans are barbarians; their acts are not those of civilized people. They, on the contrary, claim to be the superior race, that why they believe themselves entitled to universal domination" ("Civilization and Barbarism", *RCDID*, July 1915, p. 193). He then proposes to undertake a definitive study of these two concepts, which he considers insufficiently known. The conclusion of this study leaves the reader completely dumbstruck by the author's blatant antisemitism: "Wilhelm and his people are only the instruments of the Jewish occult power, which governs Freemasonry" and whose aim would be to destroy the Christian civilization! ("Civilization and barbarism", *RCDID*, July 1915, p. 205).

The jurists we just met are, in the concert of the actors of the time, both original and representative. Original because unlike the vast majority of intellectuals, who were very committed ideologically during the conflict, it does not seem that lawyers have rushed massively into this breach. This does not detract from their patriotism, but it seems that they preferred legal thinking to anti-German reflexes. Not all lawyers were tempted to fall into invective and sometimes managed to adopt a measured tone. And this, moreover, within the very periodicals which sometimes welcome rather violent remarks. Examples include professor of international law at the Grenoble Faculty of Law Jules Basdevant ("La requisition des navires Allemands en Portugal", Eng. Commandeering of German ships in Portugal, *RGDIP*, 1916, p. 268-279) and even Paul Fauchille, already known to us, who could therefore refrain from moral judgments when he decided to ("La réparation des dommages indus causés par les Allemands dans le Nord de la France", Eng. Repairing the due damages caused by Germany in northern France, *RGDIP*, 1916, p. 280-297).

While they were therefore not in the position of bootlickers, on the other hand some lawyers were representative of what can still be observed within other disciplines. Indeed, this anti-German discourse carrying accusations on the moral level was also relayed by non-lawyers. If we were to cite only one example, let us remember Emile Durkheim's short essay *Germany Above Everything* (*L'Allemagne au-dessus de tout : la mentalité allemande et la guerre*, 1<sup>st</sup> ed., Paris, 1915). He began by recalling that he had already mentioned elsewhere the " *humeur agressive* [aggressive mood]", the " *volonté belliciste* [warmongering will]", the " *inhumanité systématique* [systematic inhumanity]" and the " *cruautés réglementaires* [regulatory cruelties]" of Germany (p. 11). Even if he made a point to specify that he did

not wish to increase the idea that " *les Allemands soient individuellement atteints d'une sorte de perversion morale constitutionnelle qui corresponde aux actes qui leur sont imputés* [Germans individually are afflicted with a sort of constitutional moral perversion which corresponds to the acts attributed to them]" (p. 80), the fact remains that the excess of their ambitions confined them to pathology and that the morbidity of their mentality was proven (p. 86).

In the light of the illustrations presented, one obvious fact seems to stand out, even though it was never explicitly recognized by an author: the patriotism that the lawyer *seemed to have* to demonstrate, sometimes disturbed the way he carried out his mission. The French "national sentiment", which historians helped build and exalt, found in hostility to the Germanic spirit a vector of crystallization.

The development of anthropology, but also of the concept of race, allowed jurists to sometimes imprudently take the path of discourse stigmatizing not facts, acts, but a nature, a genealogy or even a genetic inheritance.

**Fatiha Cherfouh, lecturer (Paris-Descartes University – Sorbonne-Paris-Cité)**

---

## **Bibliography**

Becker Jean-Jacques, « 1918 : la blessure de la Grande Guerre », dans Jean-Pierre Rioux, Jean-François Sirinelli (dir.), *La France, d'un siècle à l'autre. 1914-2000 : dictionnaire critique*, Paris, France, Hachette littératures, 1999.

Bruguière Marie-Bernadette, « Germanolâtrie et germanophobie en France au XIX<sup>e</sup> siècle », dans Christian Lauranson-Rosaz, David Deroussin (dir.), *Mélanges en l'honneur du professeur Nicole Dockès*, Paris, France, La Mémoire du droit, 2014.

Deperchin Annie, « Des juristes face à la guerre : point de vue franco-allemand », dans *Clio@Themis*, n° 11, 2016, <http://www.cliothemis.com/Clio-Themis-numero-11> (consulté le 04/07/2018).

Milet Marc, « La doctrine juridique pendant la guerre : à propos de Maurice Hauriou et de Léon Duguit », dans *Jus politicum : revue de droit politique*, n° 15, 2016, <http://juspoliticum.com/article/La-doctrine-juridique-pendant-la-Guerre-a-propos-de-Maurice-Hauriou-et-de-Leon-Duguit-1087.html> (consulté le 25/07/2018).

Prochasson Christophe, Rasmussen Anne, *Au nom de la patrie : les intellectuels et la Première Guerre mondiale, 1910-1919*, Paris, France, La Découverte, 1996.

Stora-Lamarre Annie, « La guerre au nom du droit », dans *Revue d'histoire du XIX<sup>e</sup> siècle. Société d'histoire de la révolution de 1848 et des révolutions du XIX<sup>e</sup> siècle*, n° 30, 2005, <http://journals.openedition.org/rh19/1017> (consulté le 25/07/2018).

Thiers Éric, « Droit et culture de guerre 1914-1918. Le Comité d'études et documents sur la guerre », dans *Mil neuf cent. Revue d'histoire intellectuelle*, n° 23, 2005, p. 23-48.

Winter Jay Murray, Prost Antoine, *Penser la Grande Guerre : un essai d'historiographie*, Paris, France,

Seuil, 2004.

---