Jules Jacquey (1852-1927): Can the occupying forces be fought with the law?

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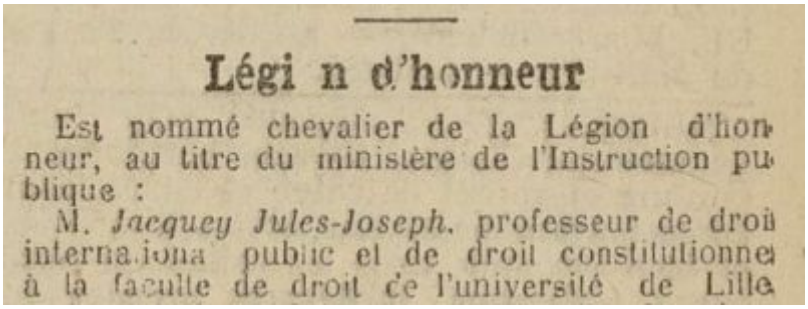

Légi n d'honneur

Est nommé chevalier de la Légion d'honneur, au titre du ministère de l'Instruction publique :

M. *Jacquey Jules-Joseph*, professeur de droit internaiona public et de droit constitutionnel à la faculte de droit de l'université de Lille

Jules Jacquey's career was coming to an end when the war broke out, a career that had taken place exclusively in Lille since he was appointed there in 1885, the year following his success at the aggregation. This anchoring was quite rare for a native of another region, in this case Haute-Saône. No doubt we must see the effect of his marriage, celebrated in Bergues in 1885, as the bride came from a family rooted in Flanders.

At the end of the summer of 1914, frightened by the rumors of barbarism peddled by the refugees from Belgium, the jurists – magistrates, lawyers and professors -, took, in large numbers, the path of exodus. In October, only four of the sixteen law school professors remained or returned to Lille: Paul Collinet, Charles Mouchet, Louis Vallas and Jules Jacquey. Their courage was undeniable.

Declared an open city and evacuated in confusion on August 24, 1914, Lille was occupied on September 2 by enemy troops. They were only passing in haste to reach their true goal: Paris. The Battle of the Marne ruined their project. Their retreat was followed by a succession of attempts to circumvent the opponent that led the belligerent armies all the way to the Belgian beaches. Lille was on the way to this "race to the sea", and in the early days of October, the city and its suburbs were the scene of fierce

fighting. Heavy shelling destroyed two thousand buildings and the city center was burnt down. Two hundred were killed and three hundred wounded among the civilian population. The French garrison surrendered on the evening of October 12. The next day, the 6th Bavarian army officially took possession of the city. General von Wahnschaffe addressed a reassuring proclamation to the inhabitants: the German army was fighting only against the French, British and Belgian armies; civilians had nothing to fear as long as they abstained from any hostile action against him. It did not occur to anyone that a particularly rigorous occupation regime would be in place for four years. From the outset, the occupier demanded that the mayor pay a war contribution of seven and a half million francs. The mayor of Lille, Charles Delesalle, the prefect, Félix Trépont, the bishop of Lille, Monsignor Charost, and municipal councilors were taken hostage and taken to the citadel to answer with their lives for the safety of the occupying troops. In the weeks that followed, binding orders followed one another (setting the German clock, forcing breeders to kill homing pigeons, closing cafes at 10 p.m., restricting travel by introducing passports and a curfew), to which were added new requests for money. The latter were such that within a fortnight, the municipality overwhelmed by the extent of the demands of the occupier, the mayor of Lille decided to call on the legal skills of two professors of international law: Louis Selosse, professor at the Catholic faculty, lawyer at the Bar of Lille and former President of the Bar, and Jules Jacquey, professor at the State faculty. On November 2, 1914, in the greatest secrecy, he sent them a letter in which he asked for their help. Thus he expressed himself in the one that Louis Selosse received:

” L’administration municipale est l’objet de la part de l’autorité allemande d’exigences journalières et diverses sur la légalité desquelles elle aurait besoin d’être apaisée, afin de pouvoir opposer au besoin le droit à la force, s’il en était besoin.

Elle a pensé qu’elle ne pouvait faire mieux pour être renseignée sur la valeur des dites exigences, que d’avoir recours à des personnes spécialement compétentes.
C’est pourquoi elle s’adresse à vous, comme elle s’adresse à votre collègue de l’université d’État, pour vous prier de vouloir bien lui accorder votre concours, en venant, aussi souvent que vous le pourrez, à la Mairie où les questions qui se posent journellement seront soumises à votre examen. [The municipal administration is the object of daily and various demands on the part of the German authorities, on the legality of which it would need to be appeased, in order to be able to oppose, if

necessary, law to force.

It felt that it could do no better to be informed of the value of the said requirements than to have recourse to especially competent persons.
That is why it addresses you, as it addresses your colleague from the State university, to ask you to grant it your assistance, coming, as often as you can, to the Town Hall where the questions that arise daily will be submitted to your examination.]”

A few weeks later, the prefect of Nord also expressed the need to be enlightened, however he only asked the professor at the State faculty, Jacquey.

The consultations given by Jacquey to the prefect are kept at the Departmental Archives of Nord. Some were typed, almost all were handwritten in a small, neat handwriting. Half of them are dated; it is possible to situate the others in time by referring to the requests expressed publicly by the German authority. The questions dealt with ranged from 1915 to September 1918, attesting to a continuous collaboration with the French administration throughout the conflict. The size of the contributions varies from a few pages to several tens.

The consultations given to the mayor of Lille by Selosse and Jacquey, were found in his papers, after his death in 1925 and published in tribute to their former president of the Bar, by the Lille lawyers, in 1927. Jacquey was to write the preface, but he died before he could do it on March 12, 1927. The consultations addressed to the mayor of Lille differ from those drafted for the prefect. In their presentation, the first, mainly written by Selosse, bore the title of the question posed by the mayor, while the second, which emanated from Jacquey, were capped with titles similar to those of the articles published in legal journals or to the wording of examination subjects, in coherence with a very academic approach to the issues examined, both by the structure of the presentation and by the precise references to concordant or divergent analyses of doctrine. Some titles of consultations written at different times of the conflict allow to judge and to appreciate the diversity of the questions dealt with by the jurist:

- *On German funerals* (December 1915).
- *On the situation of French civil servants vis-à-vis the occupier vis-à-vis international law* (n.d.).
- *Is the fact for the occupier to transport part of the population of a city to a distant department to employ it in agricultural work in accordance with public international*

law? (n.d.).

- *On the preservation of the property and rights of soldiers absent in the service of the homeland (law of March 6, year V). The role of the municipality and the prosecutor's office* (undated)
- *Effects of the military occupation of a territory on the application of criminal legislation* (1917)
- *On the situation of nurses of the French Red Cross either with regard to the welfare society to which they are affiliated, or with regard to the German State* (1917)
- *On "cost-of-living allowances" for civil servants in the Nord department*(1918)
- *On municipal decrees requiring either horses or vegetables (some considerations both on the inviolability of the ownership of furniture with regard to the administration and on the powers and means of action of the administrative authorities)* (1918)
- *On the situation of the classified agents of the Nord Railway Company kept in Lille after the mobilization* (1918).

If the Prefect of the Nord and the Mayor of Lille had known of the assessments made on Jacquey in the years preceding the conflict by the dean of the faculty, Eustache Pilon, would they have asked for him? While conceding his seriousness and professional conscientiousness, he noted in 1911 and 1912 in his career file: " M. Jacquey n'apporte pas à l'enseignement du droit international dont il est chargé, la méthode de la science que, pour cet enseignement, on ne rencontre que chez un petit nombre de spécialistes [Mr. Jacquey does not bring to the teaching of international law with which he is charged, the method of science that, for this teaching, one meets only with a small number of specialists.]" The war offered Jules Jacquey the opportunity to move out of theory to approach international law as a practitioner and to acquire in this discipline a real expertise.

Throughout the occupation, Selosse and Jacquey, who had been teaching in rival faculties, collaborated in the patriotic mission entrusted to them to provide the French administrative authorities with the legal arguments drawn from international law, which they would oppose then to the occupation authority to try to limit its demands. The two men, besides being about the same age, 60 and 62, also had in common the concern of having a son at the front: because they were in the occupied zone, they would not

receive any news, neither good nor bad, throughout the conflict. They were therefore unaware that the two soldiers lost their lives very quickly, ten days apart, both in the Marne. Paul Jacquey disappeared in the Bois de la Gruerie on 24 September 1914, and Louis Selosse was killed on October 3, 1914 in La Neuvillette near Reims. For a long time, Jules Jacquey would not know anything about the death of his son. His death and its presumed date would not be formalized until May 20, 1920 by a judgment of the court of Lille.

We can assume that Jacquey was not at peace when he responded to the double solicitation of the mayor and the prefect. Keeping himself busy and working for the common good were powerful derivatives and Jacquey spared no effort. The return to university, maintained despite difficult circumstances and the small number of students – fourteen – led him to provide courses well beyond his teaching obligations. The consultations he wrote added to this activity, so Jacquey probably did not have a minute for himself. However, he accepted the position of dean when Charles Mouchet was deported to Germany. The latter, at the end of the conflict, would praise him in the report on the activities of the Lille Faculty of Law that he presented for the year 1921-1922: " Monsieur Jacquey qui a été l'homme du devoir pendant la paix, l'a été également pendant la guerre. Ayant rejoint son poste au commencement d'octobre 1914, il y resta jusqu'à la fin de l'occupation allemande et donna pendant les quatre années que dura cette occupation toute la mesure de son caractère. Malgré une santé assez fragile, il triplait sa tâche pour assurer l'enseignement aux élèves et accomplissait en souriant, malgré de douloureuses angoisses, les charges les plus variées et les plus lourdes. Ses consultations approfondies de droit international public étaient mises à profit par l'Autorité administrative dans les conflits auxquels donnait lieu l'occupation allemande. [Mr. Jacquey, who was the man of duty during the peace, was also during the war. Having joined his post in early October 1914, he remained there until the end of the German occupation and gave the full measure of his character during the four years of that occupation. Despite his rather fragile health, he tripled his task to ensure the teaching of the students and, despite painful anxieties, carried the most varied and heaviest of burdens with a smile. His extensive consultations on international public law were used by the Administrative Authority in the conflicts resulting from the German occupation.]"

In the first months of the occupation, Jacquey and Selosse's legal advice effectively contributed to placing limits on the demands of the occupier, who was surprised by the mayor's legal science: a witness reported that the representatives of the German authority in Lille – Generals von Heinrich and von Graevenitz – would have exclaimed several times: " Votre maire est un homme universel ! Est-il fort en droit international ! [Your mayor is a universal man! He knows his international law!]" Amused on the facade, annoyed in reality, the occupier did not always react with humor, the tone could be sour: to the letter of November 1914 expressing the refusal of the mayor to make available to the German authority workers paid by the city, General von Heinrich personally responded, in French: " Je prie la mairie de s'abstenir de toute critique contre de telles décisions à l'avenir. Elles pourraient être prises comme des provocations et avoir comme réponse des punitions pour l'avenir. [I urge the city hall to refrain from any criticism against such decisions in the future. They could be taken as provocation and be answered, in the future, with retaliation.]" Despite the threat behind these words, the spiteful reaction that they reveal was not unpleasant to the French officials, especially since it spread among the population and lifted occupied hearts. In June 1915, in her journal, Maria Degruyère wrote: " On veut obliger le maire de Lille à faire travailler pour les allemands, il écrit une lettre magnifique pour refuser [The Germans want to force the mayor of Lille to work for them, he wrote a truly magnificent letter to refuse them]". Moreover, the reputation of Lille for legal resistance inspired and encouraged mayors of other cities in the department such as Fourmies and Cambrai to adopt a similar attitude, although they did not receive any legal assistance.

However, it was very dangerous to resist the occupier. For opposing him whenever he deemed it necessary, Charles Delesalle was confined several times in the citadel before being designated to be part of the convoy of Lille hostages deported to Holzminden camp. He was kept there from November 1st, 1916 to April 27, 1917, and returned very weakened. There is no doubt that if the Germans had known the identity of the authors of the consultations given to the mayor and the prefect, they would have suffered the same fate as the mayor of the city, as, even without any particular reason, the legal professionals constituted a privileged contingent of hostages throughout the conflict.

The archives give us twenty consultations written by Jacquey in response to the questions of the prefect, who, due to the situation, could no longer perform his mission under normal conditions. The situation turned out to be unprecedented: on the one

hand, communications with his hierarchy being broken, he must assume the decision-making alone and, on the other hand, he must position himself with regards to the occupier with whom a modus vivendi had to be set. The French authorities were, in fact, deeply afraid of being accused, at the end of the occupation, of having been too complacent towards the occupier, or even of having collaborated. This fear turned into the psychosis of crime of treason against the homeland. Under article 77 of the Penal Code, which incorporated the experience of the precedent of 1870, this article assimilated to the crime of treason the situation in which relief would be given to enemy soldiers: relief in men, in arms, in money or in food. In 1914, the national imagination was that of the occupied likely to betray their homeland. Therefore, we understand why the prefect of Nord and the mayor of Lille were so anxious to resist the occupier, but also to justify by law their position towards the latter.

The occupation was certainly not a new situation for the populations of Nord who, for centuries, had regularly experienced it; the Prussian occupation of 1870 still lived in very sour memories. But in 1914, the conditions under which it was to take place were no longer merely a matter of imprecise law of Nations, but of norms enshrined in conventions, the obligations of which States had agreed to abide by in The Hague as early as 1899. The 1907 convention quoted them without modifying them and it was therefore sufficient to refer to this occupation law to settle all the questions that may arise daily in the relations between occupier and occupied. In theory at least, because this new occupation law had yet to be applied, it was open to interpretation, especially since in The Hague the discussions were lively before leading to the drafting of the most sensitive articles: articles 42 and 43 defining occupation and the duties of the occupier, 48 and 49 on wartime contributions for the needs of the occupying army and those of the administration of the occupied territories, 52 and 53 on requisitions and seizures. This explains why in their consultations, Jacquey and Selosse endeavored to return to the genesis of the articles they invoked, going back to the debates raised at the Brussels conference of 1874 to highlight in particular the position of the German delegates. The reluctance expressed by the latter at the time was reflected, according to them, in the occupier’s demands, and in particular the general idea that the necessities of war justified departing from the law.

The consultation “On the German Ordinance of July 16, 1916 concerning the registering and seizure of copper, tin, nickel, etc. household items” is the one that best informs us

about Jacquey's approach to the problems posed by the occupation. In 44 pages, he replied that three points of view were to be considered: that of conscience, morality and natural law, that of international public law, and that of patriotism. The latter being developed on 18 pages justifies one to dwell on it. According to Jacquey, if the prefect, in accordance with international law, could oppose the German request, he believed that it was on another ground, that of patriotism, that the question must be asked: " voilà la seule question et toute la question… la déclaration des cuivres sera-t-elle utile ou nuisible aux intérêts de notre patrie, aura-t-elle pour résultat de servir ou de desservir les intérêts de la France ? [this is the only matter and the whole matter… will the declaration of brass items be useful or harmful to the interests of our homeland, will it result in serving or harming the interests of France?]" Jacquey proceeded with a long comparison of the respective advantages and disadvantages of the declaration and refusal of declaration of brass items to conclude that from a pragmatic point of view, it was better to declare them because the declaration would limit, thanks to the possibilities of omissions, the supply of metals which would certainly be used in the manufacture of shells intended to kill French soldiers. Did that attitude fall within the scope of article 77 of the Penal Code? Jacquey did not consider it, because this article put on the same line the supply of weapons to the enemy and the supply of food, to which the occupied were forced by paying war contributions for the maintenance of the troops of the occupier. There was no place, according to him, for a patriotism of words, of sentimentality: " Le temps de guerre n'est pas un temps où l'on puisse sans danger se laisser convaincre par des mots, se laisser conduire par des sentiments ou du moins uniquement par des sentiments… Pour vaincre, il ne suffit pas d'enflammer les cœurs et d'opposer à l'occupant une résistance passive [The time of war is not a time when one can safely be convinced by words, let oneself be led by feelings or at least only by feelings… To win, it is not enough to inflame hearts and put up passive resistance against the occupier.]" Like fire and storm, he added, war is a force that cannot be resisted, except to a certain extent and by appropriate means, knowing how to balance what is to be preserved and sacrificed. " Le meilleur patriotisme est le patriotisme pratique qui se préoccupe de produire des résultats utiles à la patrie [The best patriotism is practical patriotism, which is concerned with producing results useful to the motherland.]" In conclusion, he finally urged the prefect not to oppose the declaration of metals.

Is this conclusion not a little surprising on the part of a lawyer who was supposed to advise in reference to international law? To answer yes would be to ignore the context. In the first months of the occupation, opposing law to the occupier slowed down the pace of their demands. Thus, in June 1915, the German authorities asked the Lille industrialists to manufacture sandbags. Assuming that these bags were destined for the German trenches, they shut down their factories in a sign of protest. They were then summoned, ordered to give the list of their workers, and the governor of Lille then required the mayor to intervene with the population to get it to make the bags at home. The mayor appealed to the two lawyers for help, as he feared that the creation of the bags would contribute to the German war effort. Four days later, Jacquey wrote an 11-page reply, co-signed by Selosse. In three parts, with precise references to texts and doctrine, the consultation provided the mayor with the solid argument that allowed him in law to oppose the German requirement. In Roubaix, encountering the same refusal, the occupier, as a sanction, imprisoned in Germany industrialist and mayor of the city Eugène Motte, who had draped himself in law by invoking it, but without opposing a precise argument.

In 1916, the war became total, without limit as to the means to win it. Germany suffered dramatically to supply itself with weapons and feed its population, because of the Allied blockade that it had failed to break through despite an all-out submarine war. The blockade, which was legally contested before the war, was still legal; Britain had always opposed its outlawing, and it had never been prohibited. Having no other choice, the occupier therefore took from the population of the occupied territories what they could not otherwise obtain. The material situation of the occupied was aggravated, and it is not surprising that a certain skepticism then led Jacquey to seek elsewhere than in law the solution to the problem submitted to him.

If Jacquey had any hopes about the ability of international law to stem the war, he seems to have lost them in 1916. Selosse shared this skepticism. He expressed this in a consultation addressed to the mayor in January 1917 on the arguments he had just developed: ” Convaincront-elles les représentants de l’autorité militaire ? Je me permets d’en douter. Vous savez combien le droit international est flottant… vous savez aussi comme il est difficile de toucher aux prétendus droits de l’occupant et de ne pas éveiller les susceptibilités toutes les fois qu’on a l’air de mettre en discussion des prérogatives dont il est le seul appréciateur. [Will they convince the representatives of military

authority? Allow me to doubt it. You know how fleeting international law is… You also know how difficult it is to touch the so-called rights of the occupier and not to arouse susceptibilities whenever one seems to question the prerogatives of which they are the sole assessor.]" In the case in question, he advised the mayor to refer to German civil law, " parce que sur ce terrain, on peut espérer sinon le convaincre, au moins l'embarrasser et gagner du temps en le mettant aux prises avec des textes dont il ne pourrait contester la légalité puisqu'ils sont tirés de sa propre législation [because on this ground, we can hope, if not to convince him, at least to embarrass him and save time by putting him in trouble with texts whose legality he could not dispute since they are drawn from his own legislation]". Disillusioned, Jacquey, like Selosse, continued to advise the prefect and the mayor, with wisdom and pragmatism more than with legal expertise, until the liberation of the city on October 17, 1918.

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