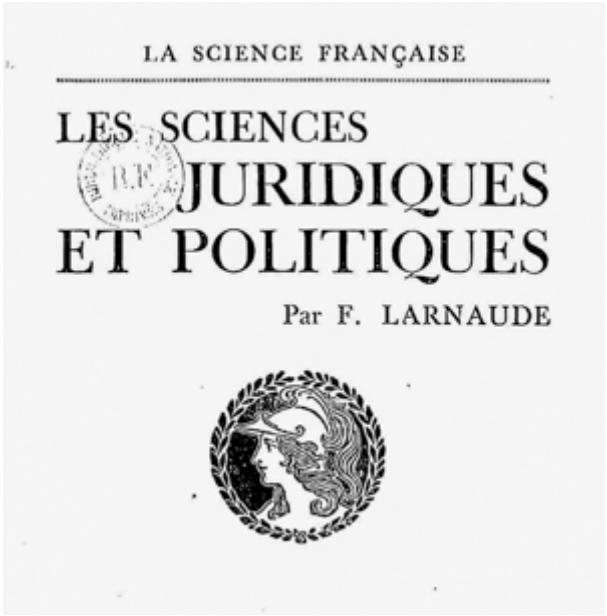
Legal propaganda in the Great War: the example of Ferdinand Larnaude’s Sciences juridiques et politiques [Legal and Political Sciences] (1915)


LA SCIENCE FRANÇAISE

LES SCIENCES JURIDIQUES ET POLITIQUES

Par F. LARNAUDE

In 1915, the World’s Fair left the Old Continent for the United States; this was not a first, since Philadelphia, Chicago and St. Louis had already hosted this event before. Recovering from the terrible earthquake of 1906, the city of San Francisco was this time chosen to receive the exhibitors of the twenty-four participating countries; between March and December 1915, it would welcome about nineteen million visitors.

The event, as always, revolved around a major theme. For this iteration, it was the Panama Canal, completed and inaugurated a year earlier, that was in the spotlight: the exhibition was renamed “Panama- Pacific” for the occasion. Indeed, this canal, whose titanic work began in 1882, allowed an unprecedented expansion of maritime trade and

contributed to the strong development of the American Pacific Coast.

Despite the existence of customs divisions between France and the United States, the French government, solicited as early as 1912, welcomed the invitation from the American embassy, bearing in mind the enthusiastic participation of the United States in the Paris World's Fair of 1889.

In 1915, however, the national and international context changed dramatically. Since the summer of 1914, France had been at war, and when the exhibition began, the whole of Europe was torn apart. In San Francisco, France was looking for more than just prestige and opportunities for its industry. France needed to strengthen its image, its legitimacy and its diplomatic fabric, by exporting "its cause" which it deemed universal, that of science, culture, civilization.

For this, the French government had settled in the pavilions occupied by its exhibitors works of art, but also many works and pamphlets, ancient and contemporary, witnesses of the excellence and vitality of French science. To allow visitors to understand the scope of these works, not always intelligible to neophytes, it was decided to attach to these collections explanatory notices summarizing French scholarly production since modern times. Each leaflet was devoted to a scientific discipline that it assessed over the long term, and highlighted the contribution of French thought and its scientists to the universal march of science.

It was then strategic for France to extol the merits – not to say the eminence – of "its" science. Indeed, French science had been perceived as declining, especially among Anglo-Saxons, since the end of the 19th century. It was German science and thought that now aroused interest and admiration. The French themselves, in the trauma born of the defeat of Sedan, has restructured their scientific institutions, their disciplines and their universities during the Belle Époque. However, pretending to act in a universal and civilizing spirit, France must assert its scientific leadership in the face of "Prussian Germany", its enemy, which it presented as brutal and savage. To attract the "camp of law", the "civilized world", France wanted to demonstrate in San Francisco that it could boast a long scholarly history and that its contemporary thinkers were still at the forefront of science.

The San Francisco notices would be grouped and published in the same book at the request of the Ministry of Public Instruction. Proof of the political dimension of the

project: Lucien Poincaré, physicist and director of higher education, wrote the preface. Published by Larousse under the title *La Science française* (1915, 2 vols., 397 and 403 p.), the book is a work of synthesis, scientific popularization and propaganda. With this publication, the Larousse publishing house strengthened its commitment to war literature, by multiplying patriotic and anti-German publications such as Henri Clouard's *Les Allemands par eux-mêmes* [Germans according to themselves], published the same year. *La Science Française* has 53 chapters of unequal importance; each dealt with a particular science, and was written by an authority of the discipline. Thus, for example, the chapter devoted to sociology was the work of Emile Durkheim; the chapter devoted to philosophy was written by Henri Bergson.

For political and legal sciences, it was the dean of the Paris Faculty of Law, Ferdinand Larnaude, who took up the pen. Presenting in less than 100 pages French law from Cujas to the present day, in all its branches and ramifications, was a formidable challenge, especially for an academic accustomed to writing for his peers and not for laymen.

Larnaude's work of popularization involved obvious simplifications and omissions, but it was nevertheless successful: synthetic, clear and instructive, the Parisian dean managed to draw a glorious fresco of French legal doctrine and its contributions to the science of law. The first part of the plan was erected around the political, legal and intellectual rupture of the French Revolution ("Le droit et la science politique avant 1789" [Law and political science before 1789] – "Le droit écrit et la codification" [Written law and codification] – "Le droit et la science politique depuis 1789" [Law and political science since 1789]). The rest of the plan, more thematic, breaks down the different branches of law; Larnaude finally presents, without order or logic, all the subjects that do not fall into the previous categories, such as procedural law or legal history, and concludes his presentation with an overview of "Répertoires, recueils, revues, journaux judiciaires, sociétés juridiques, travaux des universités et des facultés [Directories, collections, journals, judicial journals, legal societies, work of universities and faculties]". A summary conclusion and bibliography close the 75 pages of the chapter.

The portrait of French legal science drawn up by Larnaude was glorious, perhaps too much so! The work, in fact, cannot be dissociated from the context of its writing. As doctrine did in the legal journals of the time, Larnaude wrote here more in the service of the armed homeland than of science, the spirit of propaganda often pushing him to

scientific and historical fault.

Thus, the author did not hesitate to make French jurists the main bearers, through the ages, of the flame of Themis that always illuminates civilized nations, carefully omitting to mention the contributions of German thought and the ambiguous relations that French doctrine maintained with jurists from across the Rhine throughout the 19th century. Beyond past glories, the author also insisted on the "renewal" of French legal science since the 1880s: the generation to which he belonged would indeed have regenerated approaches to law, returning to French legal thought its unjustly contested letters of nobility.

Legitimizing the "camp of law": France, mother of laws and torch of "civilized nations"

The reading of the Larnaude's text extends and declines at will the first line of Joachim du Bellay's famous sonnet: "France, mère des arts, des armes et des lois [France, mother of arts, weapons and laws]". Indeed, the dean painted such a vivid and exclusive portrait of French legal thought that the whole world seemed to owe it an eternal debt of civilization. Such a panegyric, far from being the first of its kind, nevertheless astonished in a work that claimed to be "scientific", especially since Larnaude often took unfortunate liberties with history.

In approaching ancient doctrine, the dean committed significant shortcuts or omissions. For example, while Doneau's *Commentarii juris civilis* did indeed "exert great influence" in Europe, as the author wrote, the latter does not say a word about the forced departure of this Calvinist jurist to Germany, where he found refuge and exercised the rest of his life as a teacher, and where his doctrine was much more successful than in France. Same thing about Montesquieu: Larnaude presented *De l'esprit des lois* [The Spirit of Law] as a major work of political science, inspiring the greatest modern constitutions, forgetting to mention that the Bordeaux philosopher did not hide his admiration for the English model from which he drew many ideas. As for Jean-Jacques Rousseau and Grotius, Larnaude gladly naturalized them, the first because of his "fréquentation des cercles littéraires de Paris [visits to the literary circles of Paris]" which "influé grandement sur ses doctrines [greatly influenced his doctrines]", the second because of his Burgundian family roots, as well as because of his installation in Paris during the drafting of the *De jure belli ac pacis*, a work he dedicated to Louis XIII.

Celebrated with great pomp on the occasion of its centenary in 1904, the Civil Code remained a monument of pride in 1915, even if more and more voices called for a major overhaul of the work, the German BGB having seriously aged the venerable Portalis code.

Again, Larnaude wrote that the rationality of the “French juridical spirit” was manifested very early, in the great ordinances of Colbert and D’Aguesseau; but he did not say a word about the much more systematic and modern codifications adopted in many countries of central and northern Europe in the 18th century . Unable to evade the question of the Prussian Code of 1794, the Dean emphasized above all its anecdotal destiny in the face of the European triumph of the French codes. “The Napoleonic codes,” Larnaude wrote, “répondaient mieux [que le Code prussien] aux aspirations générales des peuples qui les ont adoptés [responded better [than the Prussian Code] to the general aspirations of the peoples who adopted them,]” because “la forme en était si parfaite, la langue si claire, que ces codifications ont pu s’adapter très facilement, soit par transplantation directe, soit par infiltration, aux mœurs de ces peuples. Le Français, en légiférant pour lui-même, s’est trouvé légiférer pour ces peuples [the form was so perfect, the language so clear, that these codifications were able to adapt very easily, either by direct transplantation, or by infiltration, to the morals of these peoples. Frenchmen, in legislating for themselves, found themselves legislating for these peoples]”.

While there is no question of contesting the qualities of Napoleonic codification, and in particular the Civil Code, it is nevertheless necessary to qualify the argument of the French legal genius quick to respond “universally” to the needs of the peoples of the Earth: bayonets and the submission of Europe to Napoleon had also played a significant role in the dissemination of French law in the 19th century.

Moreover, Larnaude did not say a word about the “quarrel of the Code” of 1814, and the ensuing rejection for almost a century, by Germany liberated from the French occupier, of any idea of codifying national law for the benefit of the Savignian *Professorenrecht*. This “other path” nonetheless fascinated part of the French doctrine, which, tired of the legalistic and narrow comments of the Code, envied the dynamism and scientific freedom of the Germans. The work of the “German historical school” was relayed very early in the *Themis* of Athanase Jourdan (1819-1831), a French legal journal whose main editors were accused of “francophobia” because of their strong interest in science

from across the Rhine.

While Larnaude rightly asserted that the Japanese freely went to France to seek a model of legislation, he failed to point out that the Japanese Civil Code of 1896 was inspired just as much – if not more – by German law. As for colonial law, imposed this time by the colonizer on indigenous peoples, the dean spoke little about it, except to praise the modernity of the *Code marocain* [Moroccan Code] of 1913. The example of the protectorate of Morocco was obviously not chosen at random, the latter being, since the beginning of the 20th century, the object of severe rivalries between France and the Reich.

Finally, the German enemy was directly targeted whenever, as an example or in support, the author cited the legal and political systems of the “free peoples”, that is to say the liberal democracies allied with France. As in legal journals, Anglo-Saxon systems were put in the spotlight, and Larnaude did not fail to highlight the legacies and kinship that bound them to French law.

By thus excluding Germany from the legal field, the author obviously ignored the contributions – and sometimes the advance – of German legislation on French legislation, particularly in the field of social protection and labor law. Like the doctrine of his time, he pretended to forget that the eyes of French jurists were largely turned to Germany before the Great War. Thus, for example, Larnaude wrote a very interesting paragraph on the work of the Society for Comparative Legislation and the Committee on Foreign Legislation; however, he failed to specify that it was the development and promulgation of the *BGB* in Germany that accelerated interest in comparative studies in France at the end of the 19th century.

Admittedly, French legal science justified many honors, and France could rightly boast of its laws and its jurists. However, Larnaude’s text ceaselessly erased historical asperities by more or less subtle touches or omissions; by almost systematically obscuring foreign (especially German) influences and enrichment in the construction of French science and law, by making France the torch of universal laws, the Dean did more work of combat and propaganda than work of science.

“Mother of laws”, the legal France presented by Larnaude thus embodied in the eyes of the world the camp of law and civilization in the face of Teutonic violence. Above all,

this legal *leadership* was not just a memory of past times: sometimes presented as declining, French legal science would on the contrary be more accomplished than ever at the dawn of the 20th century!

A science at the forefront of progress: the “renewal” of French legal thought

Larnaude’s pamphlet fit fully into the context of the Great War, but also in that of the “scientific renewal” of law in the Belle Époque, a pivotal epistemological and academic moment where doctrine, cornered by new social sciences, was rewriting its contemporary history and redefining its discipline and methods.

The crisis concerned primarily civil law: the Civil Code had indeed become the symbol – even the instrument – of conservatism. Prisoner of an aging text that had been commented on time and time again, the doctrine was no longer managing to respond to the new social and economic issues generated by the industrial revolution, nor even to arouse the interest of students. To compete with sociology, political science and economics, law schools officially introduced new courses and increased the number of optional courses. Larnaude perfectly described this “increase” and these “ramifications” of legal education: “D’une part des formations nouvelles, fruit d’un développement économique (industriel et commercial) nouveau, sont venues s’ajouter aux formations anciennes. Le droit industriel et le droit international privé comptent parmi ces branches nouvelles de l’organisation et de la science juridique. D’autre part, les anciennes disciplines elles-mêmes se sont quelquefois ramifiées et divisées [On the one hand, new training, the result of a new economic (industrial and commercial) development, has been added to the old training. Industrial law and private international law were among these new branches of legal organization and science. On the other hand, the old disciplines themselves had sometimes branched out and divided]” in the image of penitentiary science detached from the trunk of criminal law. Finally, Larnaude insisted on “la prépondérance prise à notre époque par l’élément de comparaison entre les lois et les théories des auteurs des différents pays [the preponderance taken in our time by the element of comparison between the laws and theories of the authors of the different countries]”.

Beyond the new teachings, the doctrine launched into a vast methodological and epistemological reflection to put an end to the “decadence” of legal studies; Claude

Bufnoir, Raymond Saleilles, François Gény, Edouard Lambert, Adhémar Esmein, Louis Josserand or René Demogue were animated by a “regenerative” mission and produce a fundamental reflection on legal science. In opposition to the old “school of commentators”, or “school of exegesis” described at the same time by Julien Bonnecase and Eugène Gaudemet, the young academics of the Belle Époque now claimed to be a new “school of science”. The time of gloss and abstractions was over! It was now the era of “observational science”, law being a “living object” in a “perpetual state of becoming”. Enriched with historical, social, economic and comparative methods, academics then set themselves the task of anticipating and ordering the legal phenomena taken in all their complexity.

Law thus returned to the frontline of sciences, and jurists became again the “specialist of the social” that they traditionally were. Larnaude did not fail to make this “scientific revolution” of law and doctrine known in his work.

Thus, the dean defended the major role played by doctrine in the development of law. It was doctrine, “c’est-à-dire les écrits des jurisconsultes et des publicistes [that is to say, the writings of jurists and lawyers]” and especially “l’enseignement des professeurs dans les universités [the teaching of professors in universities]”, that gave future practitioners and tomorrows’s legislators “l’orientation juridique qu’ils suivront plus tard [the legal orientation that they will follow later]”. Forming minds, doctrine also ensured the coherence, evolution and perfection of the multiple “manifestations judiciaires, législatives, oratoires de l’élaboration juridique et politique [judicial, legislative, oratory manifestations of legal and political elaboration]” by a “free and disinterested” criticism. It thus returned, at least virtually, to the first rank within the sources of law.

Like the academics of his time, Larnaude painted a portrait of a doctrine that had reconnected with science and resumed the march of progress. Although the most audacious ideas and programs of the “scientific school” were not followed, or not well enough, after the Great War, Larnaude nevertheless inscribed his subject in a strong dynamic of the doctrine of his time.

The dean recalled above all that, far from being downgraded, French legal science had, on the contrary, regained its lost eminence; France was therefore perfectly legitimate to ensure the *leadership* of the nations belonging to the “camp of law”.

However, the author ended his patriotic – even propagandist – speech with a call for cooperation and the rejection of any hegemony, even intellectual, which is a little outrageous considering the rest of the book: “Nous désirons rendre justice à chacun, aux petits peuples comme aux grands. Que ce soit tel ou tel peuple par sa législation, telle ou telle nationalité par ses penseurs, à qui l’humanité est redevable de ses progrès, nous nous en réjouissons, même lorsque ce peuple, cette nationalité ne sont pas la France. Une hégémonie intellectuelle ou morale serait aussi odieuse qu’une hégémonie matérielle dans le concert des nations qui doit rester libre pour être fécond [We desire to bring justice to everyone, to small peoples as well as to great ones. Whether it be this or that people by its legislation, this or that nationality by its thinkers, to whom humanity is indebted for its progress, we rejoice, even when this people, this nationality is not France. An intellectual or moral hegemony would be as odious as a material hegemony in the concert of nations, which must remain free in order to be fruitful]”. While it held the first rank in legal science, France could not crush other nations with its splendor. Let us not be mistaken: under an apparent benevolence, this conclusion was nothing but a last arrow loosed towards Germany and its (supposed) desire for “domination”.

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Bibliography

Barenot Pierre-Nicolas, « Compte rendu?: ‘Ferdinand Larnaude, Les sciences juridiques et politiques’, *La Science française*, Larousse, 1915 », dans *Revue trimestrielle de droit civil*, n^{o} à paraître, 2018.

Chambost Anne-Sophie, Gottely Alexandra, « Guerre du droit, droit de la guerre. La faculté de droit de Paris, observatoire de l’enseignement supérieur en guerre », dans *Revue d’histoire des sciences humaines*, n^{o} 33 , 2018.

Hakim Nader, Melleray Fabrice (dir.), *Le renouveau de la doctrine française?: les grands auteurs de la pensée juridique au tournant du xx^{e} siècle*, Paris, France, Dalloz, 2009.

Halphen Louis, « Exposition universelle et internationale de San Francisco. La science française », dans *Revue historique*, n^{o} 122 fasc. 1, 1916, p. 137?141.

Larnaude Ferdinand, *Les sciences juridiques et politiques*, « La science française », Paris, France, Larousse, 1915.

Mollier Jean-Yves,Dubot Bruno, *Histoire de la Librairie Larousse, 1852-2010*, Paris, France, Fayard, 2012.

Nouailhat Yves-Henri, *France et États-Unis?: août 1914-avril 1917*, « Publications de la Sorbonne », Paris, France, Institut d'histoire des relations internationales contemporaines, 1979.