Participation of French jurists in the Peace Conference of 1919

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At the end of the conflict, the victors of the First World War had wished to give a new legal colour to the Europe that would appear on the debris of the fallen empires. Clemenceau had thus spoken of the creation of a “Europe of Law” which should be the ultimate objective of the Allies when they went to negotiate peace.

In this context, the Allies had to rely on legal experts, in particular international law experts, whose technical advice had been regularly sought for the purpose of providing expertise. “Jurists” here shall refer to those who through their training knew the Law, and thus practiced or applied it. What mark did the French lawyers leave on the negotiations and the peace treaties? Did they have a merely consultative or more active role at the 1919 Peace Conference?

X-ray of the jurists present at the Conference

There were different categories of “jurists” or legal specialists in the Peace Conference, both in the context of French representation and in other allied and associated delegations. The first jurists mobilized during the war and then afterward were the legal consultants of the Ministries of Foreign Affairs. In this first group, among others, mention may be made of the French jurisconsults Louis Renault (who died in 1918) (fact sheet V. Genin) and Henri Fromageot. Other delegations included Cecil Hurst, legal consultant of the British Foreign Office, and his deputy Herbert William Malkin. There were also Sir Gordon Hewart, attorney general, and Sir Ernest Pollock, solicitor general, who advised the British government and Crown on legal matters. The jurisconsults were regularly questioned on all questions related to the law of armed conflicts and peace: thus from October 1918 Henri Fromageot was consulted to confirm the rules applicable to the conclusion of an armistice and then a peace treaty, the possible clauses of both as well as their legal implication. In this respect, French jurists considered that many clauses of different natures could be inserted; everything depended on the “degree of victory”. They were also used to inform the exchange of notes between President Wilson on the one hand and the German government on the other starting on October 4, 1918, which focused on both the possible conclusion of an armistice and the future peace. Indeed, Berlin had proposed to conclude a cessation of hostilities and taken care to agree with the victors on the basis of the future peace, that is to say on the principles contained in President Wilson’s speeches of 1918, starting with that of the fourteen points. The French and British leaders found it very difficult to accept these principles, which could in many ways hinder the ambitions of Paris and London in terms of war goals. After heated discussions, the Allies accepted the Wilsonian principles amended by two points: the British retained their restrictive definition of freedom of the seas while the French incorporated the principle of reparations into the basis of peace. This “pre-armistice agreement” was intended to give the “exit from war” a legal coloration, a contractual basis between victors and vanquished, a *pactum de contrahendo*, that is to say, a treaty prescribing the fields of the negotiation of the peace. The fundamental problem lies in the legal force that each side gave to this agreement: total for the Germans, relative for the victors who would never feel fully bound by it.

Public law professors were the second category of lawyers present at the Peace Conference. Most often they acted as “delegates, advisers, or technical experts” who were supposed to provide information to the plenipotentiaries. Among them, Ferdinand

Larnaude, dean of the Paris Faculty of Law, Jules Basdevant, Charles Lyon-Caen, Gilbert Gidel (the latter two more specialized in economic and financial issues) in the French delegation, James Brown Scott in the American delegation, Federico Cammeo of the University of Bologna for the Italian delegation, Sakutaro Tachi at the Imperial University of Tokyo and a significant number (no less than nine among the "technical experts") of Belgian professors from the universities of Leuven, Brussels, Liege and Ghent. The Serbian delegation had an equally large number of professors (six). Some law professors also held a position of jurists such as Frenchmen André Weiss or Albert de Geouffre de La Pradelle (assistant) or of legal adviser to the Republic such as Brazilian Rodrigo Octavio, professor in Rio de Janeiro.

A final group of "legal professionals" was present at the Conference. These were lawyers such as Lyon, a lawyer at the Paris Court of Appeal (there were four in the Brazilian delegation) and judges, such as President Petit of the Seine Commercial Court or assistant public prosecutor Bloch-Laroque at the Paris Court of Appeal. The magistrates were more represented among the Italians (the adviser to the Cour de cassation of Amelio or Judge Pilotti) and Belgians with First president of the Cour de cassation Van Iseghem and Adviser to the Cour de cassation Remy. Finally, the French delegation had no less than five State Councilors and one Councilor at the Cour de cassation, both of which were the highest courts in the administrative and judicial order.

Advisers and experts

Jurists had already been used during the conflict to advise policymakers. Clemenceau, for example, had requested specific reports from solicited jurists upon his release. Thus, in November 1918, he asked the dean of the Paris Faculty of Law, Ferdinand Larnaude, as well as Albert de Geouffre de La Pradelle, for a report on the criminal responsibility of Emperor Wilhelm II. The report concluded with the latter in application of the German constitution itself, which gave the Kaiser the right to declare war and the command of the army. Simultaneously, the jurists of the British Crown claimed the same thing by calling for a public trial for the Kaiser for his responsibility for the violation of Belgium's neutrality, the conduct of submarine warfare and crimes against the laws and customs of war. These lawyers were involved in the "legal war" vaunted by the Allies against the Central Empires. Some had even been members of influential pressure groups such as Ferdinand Larnaude with the National Action Committee for the integral reparation of

the damage caused by the war whose state of mind was all turned towards irreducible hostility against the former German enemy. We will return to this trend a little later. As proof of the importance of the Law in future international negotiations, Clemenceau set up a legal advisory committee to advise the French government, of which he entrusted the presidency to Dean Larnaude.

Once the conference was opened, the experts were used by the delegations as “experts” or “technical delegates” during the Peace Conference. Under article 3 of the rules of the Conference, “technical delegates” were given the opportunity to ” fournir les renseignements qui leur seraient demandés [provide such information as may be requested]” during meetings, to speak at times and, under article 13, with the approval of the Conference, to ” présenter directement des explications techniques sur telle question particulière [make direct technical explanations on a particular issue]”. The latter option could give rise to the establishment of an expert committee ” avec mission de présenter un rapport et de proposer des solutions [tasked with presenting a report and proposing solutions]”. Their role actually became deeper in the functional commissions that were established as the conference progressed to deal with more specific themes. Three main commissions involved jurists in particular: the Commission of the League of Nations, the Commission on the Responsibility of the Perpetrators of War and Sanctions, and finally the Commission on Ports, Waterways and Railways.

These three commissions were established by the plenary conference at the end of January 1919. The League of Nations Commission was very special in many respects: the presence of President Wilson gave it a very special coloring and greater power than other similar bodies. Nevertheless, Wilson, himself an academic by training, appreciated cohabitation with other experts and the discussions in this body, well reflected the freedom of tone of each of the members. Sometimes even, jurists allowed themselves to pull politicians “back into line”, as when Wilson referred to the ” sanction de l’opinion publique [sanction of public opinion]” as ” plus utile que le jugement d’un tribunal [more useful than the judgement of a court]”. Ferdinand Larnaude allowed himself to retort that ” l’opinion publique peut juger les grandes questions mieux qu’un tribunal, je le concède, mais les questions de droit, les questions d’interprétation sont au-dessus d’elle [public opinion can judge the great issues better than a court, perhaps, but on matters of law, questions of interpretation are above the mob]”. In a whisper, he would have added to his colleague Léon Bourgeois: ” Dites-moi, mon ami, suis-je à la

conférence de la Paix ou dans une maison de fous ? [Tell me, my friend, am I at the peace conference or in a madhouse?]”

Thus, the jurists also continued to act as counsel to their plenipotentiaries, who were not necessarily acquainted with the legal matter. They drafted notes and reports to guide these decisions as did, for example, for the French, jurisconsult André Weiss on the limits of article 16 of the draft pact of the League of Nations including sanctions against a state resorting to war without respect for the mechanisms of peaceful settlement of disputes, or Jules Basdevant on the political organization of the League. While providing legal knowledge and expertise, the two lawyers did not hesitate to take sides in eminently political issues such as the composition of the future Council of the League or the effectiveness of the sanctions of the pact.

In the commission of the League of Nations, legal experts most often intervened to clarify what was part of their legal tradition: for example, there were debates on the concept of “*self-government*” dear to the British when it was not included in French law. The French experts also pointed out their unease at the competence given to a possible court of justice to interpret the future pact of the League of Nations, which was rather a prerogative of the parliament under French law.

Renovation of international law

But the heart of the discussion in the commission, and particularly among jurists, lay in the status of the future international organization that would be the League of Nations. Would it call into question the sovereignty of states, create a “superstate”, to use the expression used by Dean Larnaude, or be a simple international treaty creating a confederate organization? At that time, the prospect of a super-state was unlikely to receive the support of the internationalist jurists who wanted the states, the main actors on the international scene, to remain sovereign. Nevertheless, many French jurists were determined to renew international law, as the Great War had proven that new international rules had to be enacted to avoid future conflicts and, above all, the return of a massacre like the one belligerent societies had just experienced. The aim was to promote peace through law. As Peter Jackson made clear, this was particularly important in French diplomacy during and after the Great War.

To that end, the French experts were prepared to abandon the dogma of absolute sovereignty of States to a certain extent if that objective could be achieved. This was the case of Dean Larnaude: " Cette idée de souveraineté absolue est, je crois, plus abstraite que réelle : en fait, les États depuis longtemps, consentent à des sacrifices de souveraineté. […] Quand il s'agit d'instaurer un droit, allons jusqu'au bout, disons franchement que nous voulons créer ce droit et le substituer à l'ancien pour faire disparaître les guerres. [This idea of absolute sovereignty is, I believe, more abstract than real: in fact, States have long consented to sacrifices of sovereignty. […] When it comes to establishing a new legal plan, let's go all the way, let's frankly say that we want to create this law and substitute it for the old to make wars disappear.]"

In the Committee on Ports, Waterways and Railways, jurists were also able to renew international law by participating in the drafting of new statutes, such as the internationalization of rivers like the Elbe, the Oder or the Danube.

This same desire to renew the law of Nations is reflected in the work of lawyers within the commission on the responsibilities of the perpetrators of war and sanctions. It was chaired by Robert Lansing, the American Secretary of State, who was also a trained lawyer, and there were quite a few jurists. Unlike the LoN commission, the lesser presence of politicians and diplomats gave more leeway to jurists. The French jurists promoted a small revolution in the status of natural persons in the international order: they wanted those accused of violations against the laws and customs of war to be judged not before national but international courts – meaning allies at this point in time. The French obtained only partial satisfaction since these courts were to be set up only in the face of accused persons who had harmed allied nationals of several nationalities (Article 229 of the Treaty of Versailles). On the other hand, he obtained the establishment of this court to try the Kaiser (art. 227).

Germany sanctioned by Law

This trial against the Kaiser was wanted by French jurists in the commission of responsibilities and sanctions against the attitude of the former emperor in the origins of the conflict. They also wished, like Ferdinand Larnaude, to take into account the Kaiser's "acts of abstention" in this matter, that is, not to have opposed perpetrators of violations of the laws and customs of war. These statements demonstrate the very significant will of some of these jurists to punish the former enemy. These positions,

however, while supported by the British, came into conflict with the American jurists who put forward two sets of arguments. The first was to reaffirm the fundamental principle of nulla poena sine lege (no punishment without pre-existing law), which de facto excluded the former emperor from being tried as a former head of State, since no pre-existing rule postulated his responsibility under international law. Moreover, they opposed any judgment based on the absence of a positive act. Moreover, American lawyers expressed reservations on these points when drafting the commission's report. The French therefore had to agree not to indict the Kaiser for the origins of the war, much to Larnaude's chagrin, nor even for crimes, according to criminal laws, but only for " offense suprême contre la morale internationale et l'autorité sacrée des traités [supreme offense against international morality and the sacred authority of treaties]", that is, basically, for the violation of Belgium's neutrality.

This anti-German attitude was also a major axis of reflection for lawyers concerning the League of Nations in addition to their desire to renew international law. They hoped that the League of Nations would be endowed with the means of coercion so that its action would be truly effective, that is to say, a genuine international force responsible for punishing aggressor States and intended to maintain peace. The French jurists had supported the French project of the League of Nations prepared by the interministerial commission chaired by Léon Bourgeois during the conflict. " Le Droit n'est rien s'il n'a pas la force derrière lui [Law is nothing if it does not have power behind it,]" insisted Dean Larnaude. Nevertheless, Léon Bourgeois and Ferdinand Larnaude's attempts to create this power, or even an international headquarters, stumbled before the hostility of the Anglo-Saxon delegates. The renewal of international law therefore had its limits, but the French jurists, while being attached to the League of Nations, would conceive of a certain resentment in the face of this relative failure.

The involvement of legal experts did not stop at the elaboration of the clauses of the treaties or even at their drafting – although the task of shaping them was largely their responsibility in the drafting committee of the conference, and Henri Fromageot had the upper hand on these issues on the French side. The lawyers also participated in the Allies' response to the Germans, once the Germans were invited to familiarize themselves with the conditions of early May 1919. Ferdinand Larnaude thus participated in the elaboration of the allied response to the German (concerning sanctions) and Austrian (on the League) counter-proposals, while Jules Basdevant took

his place to respond to the chapter on Austrian responsibilities. In this role, the jurists also demonstrated their political role by insisting, according to them, on the responsibilities of the Centrals in this matter and their function was considered essential as the German delegation had chosen to bring the issue of non-compliance by the Allies with their commitment during the negotiation of the pre-armistice agreement and its link with an accusation of guilt in the origins of the war.

Versailles was judged by some, like Bertrand de Jouvenel, as a “jurists’ peace”. It was partly due to the work of eminent legal scholars who, in many fields, influenced the decisions of the “peacemakers” of 1919-1920. On the French side, these lawyers participated in a desire to renew international law, which was to be embodied in an effective League of Nations. But the desire for effectiveness of this international organization associated with the chapter on sanctions to be imposed on the defeated was also the other side of the action of the jurists who had been part of the “legal war” against the Central Powers: their action aimed to sanction the defeated and to protect themselves against their revenge.

They failed.

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