The Paris Faculty of Law in the war for law

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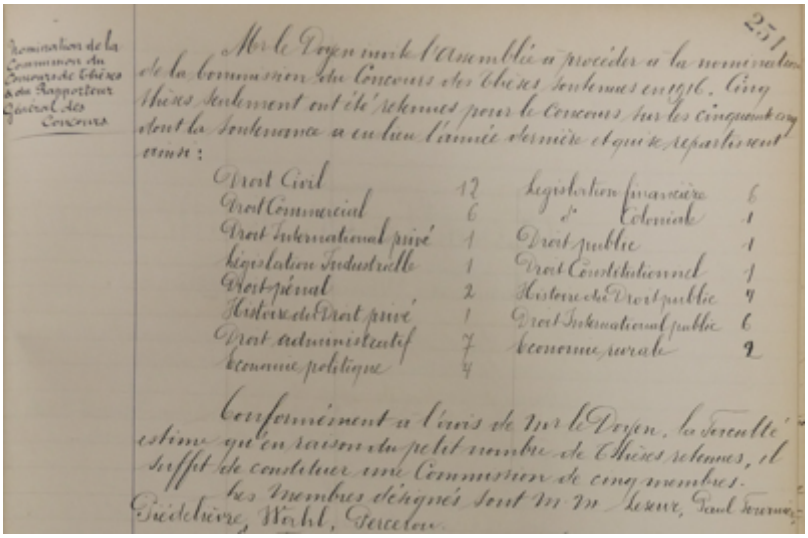

The First World War was a pivotal moment for the Paris Faculty of Law. As the largest law school in France, it soon had to deal with an exceptional situation that deprived it of part of its students and professors. Under the impetus of its dean, Ferdinand Larnaude, the faculty was put at the service of France's war against Germany, an intellectual struggle of law against force that enrolled both professors and students.

War against the Paris Faculty of Law: the transformations of education

The declaration of war in August 1914 surprised the faculty during the end of the examination period and upset the start of the academic year 1914-1915. Student numbers dropped throughout the war. Several teachers, of an age to be mobilized by the army, were sent to the front or to legal or administrative services of the army.

The faculty had to manage shortage and organize its wartime operation. Some courses, with reduced staff, were temporarily suspended or shared between teachers depending

on mobilizations. Exams were adapted to allow mobilized students to participate: early sessions took place during the war, and a simplified regime was organized in the post-war period. The faculty also sent law textbooks, collected from Latin Quarter publishers, to student prisoners in Germany, while taking measures to protect its premises or its collections of ancient books.

Several professors developed their teaching, especially in public law. Constitutional law (in first year) and public international law (in second year), normally taught in the second semester, were thus taught in the first semester on account of their particular political significance: “À raison des évènements que nous traversons, il importe que des notions de droit public soient données, dès le début, aux étudiants nouveaux aussi bien dans le domaine du droit public interne que dans celui du droit public international [In view of the events we are going through, it is important that notions of public law be given, from the outset, to new students, both in the field of domestic public law and in that of international public law]”. (Assembly meeting of September 30, 1914)

Courses in public international law were particularly affected. André Weiss thus brought up the *Various conceptions of international law, highlighted by the war of nations: that of Germany and ours* (during 1914-1915 to 1916-1917). Louis Renault, in 1914-1915, worked on the *Law of Continental Warfare*. *Special study of the questions of the War of 1870 and the War of 1914*, and devoted the course of 1916-1917 to *the Law of Armed Conflicts*. Antoine Pillet dealt with *treaties relating to the law of armed conflicts* in 1914-1915 and 1917-1918.

War was often integrated as an example or complementary development, as in Gaston Jèze’s course on financial legislation in 1917-1918 and 1918-1919. The ideological mission entrusted to teaching was not without its difficulties: Jèze, believing himself to be serving the cause of the French Republic by comparing Napoleon, the “crowned bandit”, to the German Kaiser during a lecture on the financial practices of authoritarian empires, in 1916, saw Bonapartist students rise in protest, accusing him of breaking the Sacred Union.

During the post-war period, the attention of professors soon largely turned away from the matter of war, even if some of them analyzed its legal consequences. René Jacquelin, professor of administrative law, devoted his course from 1922-1923 and 1923-1924 to *the Influence of War on Administrative Law*. Jules Basdevant dealt

with the Maritime Seizure Tribunal in 1921-1922 and 1924-1925, while reparations for war damages were addressed by Henry Berthélemy in his Administrative Law Course in 1924-1925. The directly utilitarian function of the war teachings, however, receded as the conflict did; the traditional frameworks of education then regained the upper hand.

After the armistice, the return of the mobilized and the rapid growth of the student body signified the return to normal operation of the faculty. Many celebrations marked the end of the war, making it possible to pay tribute to the dead and reaffirm the mobilization of the faculty, which received messages of congratulations from several political authorities, such as Orlando, public lawyer and president of the Italian council at the end of the war. The *Livre d'or de la faculté de droit de Paris – Guerre 1914-1918* contains speeches made during a ceremony held on March 15, 1925 and tributes to its members who died during the fighting, such as Maurice Bernard, professor at the faculty and member of parliament, who died during training while he was an aviator captain, or to students, like Jean Saleilles, son of Raymond Saleilles and grandson of Claude Bufnoir, both former professors of the faculty.

The very constrained situation of the law school from the beginning of the conflict thus created an exceptional, but temporary, situation. Members of the faculty strove to maintain, where possible, the normal operation of the institution (thus, maintaining the organization of annual competitive exams between students), while using the teaching of law to further the ideological struggle against Germany. The entry into war of the faculty had only one avowed aim for its members: not simply to manage the shortage of students and teachers alike, but also to defend the value of law against brute force, embodied by the Germans.

Fighting for Law: science in the service of War

As early as Dean Larnaude's speech in November 1914, the faculty came to the forefront of a mission to defend law against force, which led it to protest against the violation of Belgian neutrality by the Germans in defiance of international law and to affirm the legitimacy of the fight led by France: "Nous enseignons la loyauté dans les rapports des particuliers et dans les rapports des peuples entre eux, et c'est la perfidie, le mensonge, l'espionnage devenu un véritable et nouveau pouvoir de l'État, qui ont été depuis quarante-quatre ans pratiqués contre nous, qui le sont encore tous les jours dans la guerre actuelle ! Nous enseignons le respect des contrats, et aussi le respect

des traités, qui sont des contrats, par les particuliers et par les peuples qui les ont consentis. Et nous avons assisté à la plus révoltante violation de la parole donnée, que l'histoire ait encore jamais enregistrée. [We teach loyalty in the relations between individuals and between peoples; and now perfidy, lies, espionage have become a real new power of the State, which have been practiced against us for forty-four years, which are still practiced every day in the current war! We teach respect for contracts, and also respect for treaties, which are contracts, by individuals and by the peoples who have consented to them. And we have witnessed the most revolting violation of the given word ever recorded]".(Larnaude, November 7th 1914)

The target of the action of the faculty was not as much the German army or government, as it was the academic world itself, the place of production of the legal theories of which the German actions were only the deplorable consequence. Larnaude never ceased to reaffirm the special role of the Faculty of Law in responding to these theories by developing competing theories justifying France's investment in the war.

The context of the war offers professors the opportunity to update certain doctrinal controversies in order to reaffirm the positions and antagonisms in the academic field. In a 1915 article on "the foundation of political authority", Henry Berthélemy, professor of administrative law and Larnaude's successor as Parisian dean after the First World War, linked the theory of the legal personality of the state to a doctrine imported from Germany, which led to granting too much power to the state by legitimizing the exercise of force. He refuted these "Germanisms", notably the theory of the self-restraint of the state, the "[dont l'] expression seule en est barbare [sole expression of which is barbaric]", since it signified the primacy of force over law. On the contrary, Berthélemy (like Duguit) deemed the theory of the juridical personality of the State useless and dangerous. However, in suggesting that Maurice Hauriou, by adopting the theory of personality, was joining these German conceptions, Berthélemy provoked the former's reply, and an exchange of correspondence which was published in the *Revue du droit public* in 1916.

The subordination of science to the demands of war required the justification of French positions on the diplomatic level. Jacques Flach, professor of comparative legislation at the Collège de France, was thus part, through the publication of several pamphlets, of the fight for law defended by Larnaude. Addressing "the neutrals", he exhorts them to refuse the camp of brute force: "L'humanité est placée devant deux horizons : le règne

de la force égoïste et brutale fondé sur l'orgueil de race et asservissant le monde, ou le règne de la justice reposant sur la double assise de l'amour de Dieu et de l'amour des hommes et assurant à chaque peuple le libre épanouissement de sa conscience et de sa vie nationale [Humanity stands between two horizons: the reign of selfish and brutal force based on racial pride and enslaving the world, or the reign of justice based on the double foundation of the love of God and the love of mankind, ensuring to each people the free flowering of its conscience and its national life]". (Jacques Flach, *The Law of Force and the Force of Law*, 1915, p. 6)

Flach used legal history to prove the legitimacy of the French claim to Alsace and Lorraine, both culturally and legally; in particular, he refuted diplomatic evidence that would prove Alsace's connection to Germany from the 9th century onwards.

But French pretensions were articulated with a more universal fight to promote international law. Notably, Larnaude maintained an active correspondence to make the position of the faculty known: he sent the text of his first day of class speech to several universities in neutral countries and encouraged his colleagues to resume contact with former foreign students who had returned to their country in order to "contribute to this propaganda". Geouffre de La Pradelle, professor of the law of nations, received an allowance in September 1914 to go and teach a course on the *law of armed conflicts* at Columbia University; he spent most of the war in America, multiplying contacts and conferences in the United States and Latin America, in order to convince American countries to become more involved in the war alongside France and England. Upon his return to Paris in 1917, he devoted the course of public international law to *America, war, and international law*.

After the armistice, in December 1918, Nicolas Politis, former professor of public international law at the Faculty of Law, became the Greek Minister of Foreign Affairs during the world conflict, then delegate of his country to the Peace Conference, was conferred the honorary status of the Faculty of Law. In his speech of thanks, he expressed his satisfaction that the end of the war meant the triumph of international law over the "sarcasm" of which it was the target: "Dans l'œuvre réparatrice à réaliser, il devient une partie fondamentale du droit, avec les sanctions qu'il comporte [In the work of reparation to be carried out, it becomes a fundamental part of law, with the sanctions it entails]". International law now aimed to prepare for and guarantee peace by avoiding a new war.

The uniqueness of the mobilization of lawyers and economists lies in the use of their expertise in post-war international negotiations, in which Larnaude took part. It was also a matter of influencing the evolution of legislation related to the war, as was the case with mobilization for the repair of war damages. As early as December 1914, the Government and Parliament recognized the right of victims of material damage as a result of the war to obtain compensation from the State. This right must be implemented by a law, the draft of which was tabled in 1915. But the disagreements between the chambers of Parliament led to long delays in its adoption: while the Chamber of Deputies wanted to impose on the victims compensated to use their compensation to rebuild or reconstitute their destroyed property, the Senate opposed it in the name of the individual right of ownership.

In this debate, the Paris Faculty of Law intended to put all its weight in favor of the freedom of use, the only way to guarantee a real right to compensation, but also to take into account the economic objective of reconstituting the destroyed territories. The idea of social law was brought to the forefront, marking a break with the individualistic conceptions of the 19th century, but also with certain civilistic conceptions. The law was grasped through the purpose it fulfilled for society

Several of the faculty members participated in conferences on the subject and sought political relays, the main instrument of which was the National Action Committee for the Comprehensive Reparation of War Damage, formed in early 1915 and chaired by Ferdinand Larnaude; the Committee brought together lawyers and economists, but also engineers and architects, and included several politicians. There was constant contact with the political world, in particular with the Senate, which was closer to the Committee's position on the issue of employment. Larnaude himself was interviewed on February 11, 1916 (with Fernand Faure, notably) by the special committee of the Chamber of Deputies in charge of the project, then on February 20, 1917 by that of the Senate, chaired by Léon Bourgeois. This mobilization left out only a few lawyers, who were in favor of the right to compensation, but not of the modalities discussed in Parliament. In 1917, René Jacquelin, professor of administrative law, published a pamphlet against reuse, considered as a pretext to extend the control of the administration over properties (*Le droit social et la réparation des dommages en régions invées*, Paris, Tenin).

If the professors, in the very particular context of the National Union, agreed to assume a propaganda function for their scientific activity, the First World War crystallized the relations of law professors to political power, as they would express during the Interwar. These reports were made of proximity, with many contacts, especially for Parisian professors, but also of mistrust: jurists sought to recall principles defined as strictly legal to a political staff always suspected of wanting to strengthen the grip of the State on individuals.

The mobilization of law professors did not only serve a propaganda function. The war was also the occasion for a work of accumulation of sources and reflection on the transformations of the law, visible in magazines, but also in several series of publications on the effects or consequences of the war. Gaston Jèze thus published a series of works on the financial aspects of the war, in France (*Les finances de guerre de la France* [War Finances of France], 5 books from 1915 to 1920), in England (*Les finances de guerre de l'Angleterre* [War Finances of England], 7 books from 1915 to 1923) and in Italy (*Les finances de guerre de l'Italie* [War Finances of Italy] Paris, Giard & Brière, 1916); he also contributed to the French translation of the *War Finances of the United States. The War Revenue Act of 1917*, by E. R. A. Seligman (Giard, 1918).

Paul Fauchille and Jules Basdevant, a professor in Paris, published several collections of jurisprudence on maritime captures (*La guerre de 1914. Jurisprudence britannique en matière de prises maritimes…* [The war of 1914. British Jurisprudence in the matter of maritime captures…], 2 vols., 1918-1927; *La guerre de 1915. Jurisprudence italienne en matière de prises maritimes…* [The war of 1915. Italian Jurisprudence in the matter of maritime captures…], 1918; Fauchille published in 1916 a volume on French case law on the subject). The use of military ships to seize enemy-flagged merchant ships, or to prevent neutral smuggling, experienced a considerable resurgence during World War I and widespread use by the Germans with the use of submarines. The principle that all seaborne catches must be tried by courts (in France, the Council of captures) generated abundant jurisprudence among all belligerents, which was the subject of a classification work by lawyers. Even before the start of the war, the prospect of an international court had aroused a doctrinal interest in the question. Resurgence of an ancient practice of war, the jurisdiction of captures testifies to the efforts of jurists to build common international rules, but also the limits of the right to frame war. The

abundance of decisions during the war in any case gave rise to the same scientific work of collecting and classifying case law as in civil law. The war thus offers international lawyers the opportunity to bring their work closer to that of their colleagues in other disciplines.

Mobilizing students: the example of doctoral theses

The mobilization of the faculty also concerned students, despite the fall in numbers due to the mobilization. Whether it was the study of the First World War or a broader legal or economic reflection on the modalities and consequences of the military phenomenon, the work of doctoral students shows the impact of war.

Doctoral theses on war had appeared long before the outbreak of the First War. The theses then focused on the international law of armed conflicts, including its theoretical and historical aspects (one of the theses of Jules Basdevant was thus devoted, in 1901, to *La Révolution française et le droit de la guerre continentale* [the French Revolution and the law of continental war]). The other theme that recurred several times was that of councils of war, a specific military jurisdiction that was the subject of several reforms or suppression projects in the 1900s, following the Dreyfus affair. However, the number of theses on war remained limited, 2 or 3 per year, except in certain years (for example, 1903, 1912 or 1913).

The number of theses on war multiplied from 1914. The gross figure was not, however, a sufficient indicator, as their number sometimes remained relatively small (1 in 1915; 6 in 1917), even if it may have risen more (16 in 1919, and between 10 and 15 in the following years until 1925). It is above all the proportion taken by this question in all the theses that is significant: while the number of theses defended often exceeded 300 per year around 1910, it dropped sharply to less than 50 per year during the war years, before rising to an average of about 200 theses per year from 1924.

The themes also varied considerably compared with the pre-war period. International law remained present (J. Brucy, *Les traités et la réglementation du droit de la guerre* [Treaties and the regulation of the law of armed conflicts], 1917; P.-E.-M. Yvon, *La guerre aérienne* (contribution à l'étude de ses lois) [Air warcraft (contribution to the study of its laws)], 1924; R. Navello, *L'évolution du droit de visite et du droit de prise au cours de la dernière guerre* [The evolution of the right of access and the right of capture

during the last war], 1925), but less dominant than before the war. Subjects of private law, little represented before 1914, were the object of regular interest (J. Déjardin, *L'effet de la guerre sur les relations entre locataires et propriétaires* [The effect of war on relations between tenants and landlords], 1916; J.-E. Gueullette, *Des effets juridiques de la guerre sur les contrats* [On the legal effects of the war on contracts], 1918; and after the war ended: P. Tatry, *Loi du 21 janvier 1918 sur les marchés à livrer et autres contrats commerciaux conclus avant la guerre* [Law of January 21, 1918 on contracts for delivery and other commercial contracts concluded before the war], 1920; J. Lepargneur, *La prorogation des contrats à exécution successive après un cas de force majeure et particulièrement à la suite de la guerre de 1914* [The extension of successive performance contracts after a case of frustration and particularly following the war of 1914], 1920). Similarly, several subjects regarded the situation of soldiers, prisoners or victims of war (A. Mailler, *De la distinction des combattants et non combattants comme base du droit de guerre* [On the distinction between combatants and non-combatants as a basis for the law of armed conflicts], 1916; J.-B. Faure, *Le mutilé de guerre dans l'industrie* [The war-wounded in industry], 1917; N. Dejean de la Bâtie, *Des modifications faites par la guerre à la législation des accidents du travail* [On the changes made by the war to the legislation on workplace accidents], 1918; Captain Funereau, *Les anciens combattants et la législation d'après-guerre* [Veterans and post-war legislation], 1924). Several theses also dealt with the consequences of the war on railways.

The majority of theses, from the war onwards, and especially after 1918, regarded financial and economic questions. Public finances were frequently discussed both for France (M. Dodinot, *Le contrôle des finances publiques et les formes comptables dans le budget de la guerre* [Control of public finances and accounting forms in the war budget], 1916) and for foreign countries (Egypt: J. Misrahi, 1919; Russia: B. Eliacheff, 1919; Romania: C. C. Paraschivesco, 1920). Tax issues, in particular the war profits tax, were the subject of several theses (e.g. G. Monteux, *Les conditions et l'application de la loi sur les bénéfices de guerre d'un point de vue économique* [The conditions and application of the law on war profits from an economic point of view], 1920). Others dealt with the economic or monetary consequences of the war (E.-G. Sacazan, *La situation économique et financière de la Banque de France pendant la guerre* [The economic and financial situation of the Banque de France during the war], 1918; J. Tennenbaum, *Le rôle de la Banque de France pendant la guerre* [The role played by

the Banque de France during the war], 1919; P. Izard, *Le chômage et le placement en France pendant la guerre* [Unemployment and job placement in France during the war], 1920; L. Goldstein, *La circulation de l'or pendant la guerre* [Circulation of gold during the war], 1921; S. Khiat, *Le taux de l'intérêt dans l'histoire et la législation. Sa hausse depuis la guerre* [The interest rate in history and legislation. Its rise since the war], 1928) or the functioning of international trade in wartime (R. Bouffandeau, *Du régime des importations et des exportations pendant la guerre et l'après-guerre (Août 1914-Août 1920)* [On the regime of imports and exports during the war and the post-war period (August 1914-August 1920)], 1921; R. Goujet, *Le protectionnisme en France depuis la guerre dans les faits et la doctrine* [Protectionism in France since the war in fact and doctrine], 1922). Some theses focused in particular on England (L. Perségol, *Les conséquences économiques de la guerre en Angleterre* [Economic consequences of the war in England], 1922) or Germany (P. Pardailhé-Galabrun, *L'organisation économique de l'Allemagne pendant la guerre* [The economic organization of Germany during the war], 1922). On the other hand, directly political questions were less present (A. Narodestzki, *Les internationales et la guerre mondiale. Faillite des trois internationales* [Internationals and the World War: Bankruptcy of the Three Internationals], 1922).

Among the war-related topics, special mention should be made of compensation for war damages. Twenty theses defended in Paris directly covered this subject, within a relatively short period (between 1916 and the beginning of the 1920s for the most part). Most of them offered a description of the reparations regime, whether it was the provisional regulations introduced from 1915 or the situation created by the law of 17 April 1919, which was the subject of several analytical presentations (for example R. Alhein, *De la réparation des dommages de guerre en matière mobilière. Loi du 18 avril 1919* [Compensation for war damages in the field of movable property. Law of April 18, 1919], 1919). Some theses proposed a more theoretical study, on the justifications of reparation (É. New, *Le risque social : fondement juridique des lois de réparation des dommages causés aux biens et aux personnes* [Social risk: the legal basis for laws on the reparation of damage to property and people], 1918, thus linked legislation to the solidarity movement).

The theses written during the war sometimes sought to weigh on the parliamentary debate, while the law was still under discussion (P. Gouin, *La liberté du remploi dans la*

réparation des dommages de guerre : contribution à l'histoire de l'élaboration de la loi sur la réparation des dommages de guerre [The freedom of re-employment in war damage compensation: a contribution to the history of the development of the law on war damage compensation], 1917). The theses of the Interwar examined, often critically, the implementation and practical results of the law (G. Hennion, *De l'application de la loi du 17 avril 1919 sur la réparation des dommages causés par les faits de la guerre. Interprétation administrative et jurisprudence* [On the application of the law of April 17, 1919 on the reparation of damages caused by the facts of war. Administrative interpretation and jurisprudence], 1928). Like the other themes, war damages were also considered for other countries, such as newly formed Yugoslavia or Romania.

These theses placed the doctors of the faculty in the field of legal expertise promoted by the professors, whose main publications on the reparation of damages they often quoted (for example, articles by Barthélémy on the basis of the right to reparation or Jacquelin's work opposing the principle of social law). The juries, composed of three professors, showed 24 different names. Two of them stand out in particular: out of 20 theses, Jacquelin was part of 8 juries (including 3 presidencies), Larnaude of 6 juries (including 4 presidencies and 2 joint juries with Jacquelin). They thus confirmed, with antagonistic positions, their scientific and political investment in this field.

The domination of subjects of public or economic law did not, however, stem directly from the particular tie that war would maintain with this disciplinary field. Above all, it must be linked to the general evolution of the law doctorate. In 1895, the reform of the doctorate created two mentions, one in legal sciences (corresponding mainly to private law and criminal law) and the other in political and economic sciences. This second section offered a privileged ground for the study of war. However, in the 1910s, it also became the most frequent mention of the doctorate, to the detriment of legal sciences. In 1912-13, 285 theses were defended, 156 of them in political science. During 1919-1920, only 40 students were enrolled in legal sciences, compared to 280 in political and economic sciences (not all defended their thesis in the same year).

Between the aspiration to normality and the desire to get involved in war, the Parisian faculty experienced sudden, sometimes lasting, but mostly partial and temporary transformations of its functioning and its scientific mission.

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