

## *Chronicle of Research in Legal and Constitutional History in France in 2019*

**Keywords:** conference, constitutional crisis, France, legal history, publication, Yellow Vests

**Słowa kluczowe:** konferencja, kryzys konstytucyjny, Francja, historia prawa, publikacja, żółte kamizelki

Over the course of 2019 there were a number of significant developments in the area of legal and constitutional history in France and a large number of academic works were produced. Only the most relevant developments have been considered below. Publication dates have been omitted since this chronicle is, by definition, restricted to events which took place in 2019.

### 1. The “Yellow Vests” (*Gilets Jaunes*) Movement – a Constitutional Crisis

Constitutional developments in 2019 have largely focussed on the Yellow Vests crisis. This movement was born towards the end of 2018. It was initiated by a truck driver to protest against rising fuel costs. Members of the movement identified themselves by wearing the fluorescent yellow, high-visibility safety vests which, under French law, drivers must carry in their cars and which must be worn in emergencies. According to the movement’s supporters, its membership is made up of low-income workers who tend to wake up early in the morning and use their cars to get to work. The protest action took two main forms. Perhaps most visible were the crowds of protesters who came together to demonstrate in the historical centres of large cities.

Paris was a focal point for protesters even if few Parisians participated in the movement. Protesters identified themselves as people living on the outskirts of cities. They also perceive themselves as marginalised from mainstream French society. The symbolic

meeting place for the Yellow Vests was the area of Champs-Élysées. The overrunning of the Arc de Triomphe on 1 December 2018 was experienced as a national trauma. Another form of protest action was observed in the provinces and in the countryside, where members of the movement occupied intersections and roundabouts. In some instances, the protesters even set up roadblocks.

The demands of the Yellow Vests are not easily articulated. Members of the movement appear to be primarily concerned with the redistribution of wealth. They want lower taxes and more public services. They are angry with the President of the Republic, Emmanuel Macron, whom they hold responsible for their suffering. It is movement of anger which appears to stem from a feeling of being treated as an under-class and generally abandoned by the state. The movement operates outside and against traditional trade union structures. Members do not feel they are adequately represented by the traditional representative structure of the labor movement. For this reason, their protests have targeted the full range of representative bodies, both governmental and non-governmental, at the national, regional, and municipal levels. This political crisis is also a constitutional crisis and raises many questions.

The first questions are of a material nature. The police strategy for maintaining order was the subject of criticism and court challenges. It would have been counterproductive to prevent misbehaviour while at the same time obstructing personal freedoms and liberties. The use of rubber bullets and sting-ball grenades led to many people being injured. The traditional French framework governing the right to protest is not well-suited to protests without legal organisers. A new balance needs to be struck to ensure that public order is preserved while at the same time protecting people's right to demonstrate.

In many ways, the Yellow Vests crisis reflects a crisis of representation and of the welfare state. This presents a paradox. The Yellow Vests do not feel that any of the current institutions represent their interests. At the same time, they are asking the President of the Republic whom they associate to a king of the *Ancien Régime*, to solve all their problems. They are very critical of political parties, but, ironically, have failed to come together to create a unified movement of their own. Members of the movement have not taken part in the large-scale national debate instituted by the government to find solutions to the crisis. They avoid mainstream media. Social media, however, has become a catalyst for the movement, despite the reputation it has for spreading so-called *fake news*.

The horizontal and non-hierarchical structure of social media has made it the preferred forum for the Yellow Vests to debate issues amongst themselves. Despite vigorous online debate, the transformation from the virtual world to the real world does not yet appear to have taken place. During the European Elections, the composition of candidate lists for the Yellow Vests created controversy within the movement. Every Yellow Vest candidate list was criticised as being motivated by self-interest. This political crisis has, for the moment, not yet reached the polling stations.

Naturally, public law authors have studied this phenomenon. Numerous publications and academic gatherings have addressed the subject. For instance, the research centre Léon Duguit, from Évreux University, organised a conference entitled "The *Gilets jaunes* through the prism of law" on 6 September 2019. Numerous articles have been pub-

lished on the topic of the *Gilets Jaunes. Hypothèses sur un mouvement (Yellow Vests: Reflections on a movement)*, Cahier no 1 AOC, ed. La Découverte.

## 2. Conferences

Many events were held, including:

The *Société d'histoire du droit* ("Society of Legal History") was founded in Paris in 1913. Its objective is to investigate all fields of legal history, including the history of both public and private French and foreign law from early times to contemporary codifications. During the academic year, the Society organises monthly conferences which take place at the law faculty of Paris, opposite the Panthéon. Once a year, the Society organises a special event – the International Days – which, on alternate years, is held in France or overseas. This year, the International Days event was held between 23 and 26 May 2019 in Clermont-Ferrand in partnership with Clermont-Auvergne University and the Michel de l'Hospital research centre. The theme for the conference was "European legal culture, between fact and fiction". The program combines academia and culture with a visit to historic places. At least forty researchers from Europe came together to discuss the multiplicity and the unity of European legal systems during different sessions organised according to speciality area.

Since 2018, Luigi-Alberto Sanchi from the *Institut d'histoire du droit* (Paris) and Xavier Prévost from the *Institut de recherche Montesquieu* (Bordeaux) have overseen a cycle of research on legal humanism. Their purpose is to give a new definition to legal humanism by studying sources. The cycle is divided each year between research seminars, which take place in Paris, and an annual conference. Thus, in 2019, on 7 and 8 March, the Bordeaux University hosted an international conference about "Renaissance in legal thought (19th–20th centuries)"; in 2018, the subject of the conference was the work of Guillaume Budé.

With "The decisive decade: 1869–1879", held between 2 and 4 September in Orléans and Paris, three days of studies were dedicated to the end of the Second Empire and the beginnings of the Third Republic. This was a key historical period for the establishment of a republican order in France. The event was supported by the *Comité d'histoire parlementaire et Politique* and the University of Orléans (POLEN-CEPOC).

Given the reputation of Léon Duguit as the "Founding father" of French public Law, it is important that his works continue to be studied. With that in mind, the University of Burgundy organised a two-day conference (7<sup>th</sup>-8<sup>th</sup> November) in Dijon focussed on one of Duguit's most famous books: *The Constitutional law treaty*.

For all historians, access to archives is a sensitive question. In France, this issue is regulated by an important law from 1979. Forty years after this law was passed, the committee for history, established by the Minister of Culture, gathered together archival specialists to discuss the history and benefits of this law ("The 1979 law on archives. Birth, legal scope and evolution". Paris, 3rd December).

### 3. Publications

Among numerous publications, some noteworthy examples include:

*Guide de recherche dans les archives du Conseil d'État (Guide to research in the Council of State archives)*, Emmanuelle Flament-Guelfucci, Isabelle Chave (dir.), ed. La Documentation française. Produced with the support of French Council of State and the National Archives, this book gathered together information about research at the Council of State archives. It is divided into three parts. The first part sets out the different groups of archives pertaining to the Council of State, divided by period. The second chapter contains practical guidance with chapters such as the “communicability of archives”. The third part contains a list of all doctoral dissertations concerning the Council of State. Researchers now have available to them a helpful tool when undertaking research about the Council of State and the history of administrative law.

*Les grands arrêts politiques de la jurisprudence administrative (The major political judgments of administrative case law)*, Thomas Perroud, Jacques Caillosse, Jacques Chevallier, Danièle Lochak (dir.), ed. L.G.D.J. This collective book debates the separation between law and politics. Its objective is to identify where judges in well-known and significant administrative law cases made their decisions based on political factors.

*Mélanges en l'honneur de Jean-Pierre Coriat (Liber amicorum Jean-Pierre Coriat)*, Emmanuelle Chevreau, Carla Masi Doria, Johannes Michael Rainer (dir.). Jean-Pierre Coriat is a specialist of Roman law and antiquity. He contributes to the study of the Roman Emperor's legislative power, especially during the reign of Severus. This book contains sixty-four contributions from lawyers and historians. It is worth noting that half of the contributors are foreigners.

*La règle ou l'unité ? Le juge et le droit dans la France moderne (XV<sup>e</sup>-XVIII<sup>e</sup> siècle) (Rule or unity? Judge and law in modern France [15th-18th centuries])*, Patrick Arabeyre, Oliver Poncet (dir.), ed. Classiques Garnier. This volume deals with the following question: what role did judges play in the conceptual movement towards unification of the law for the benefit of royal authority?

Frédéric Constant, *Le droit mongol dans l'État sino-mandchou. 1644–1911. Entre autonomie et assimilation (Mongolian law in the Sino-Manchu State. 1644–1911. Between autonomy and assimilation)*, ed. de Boccard. The Qing government tried to implement new legislation based on Chinese principles, but it failed to completely erase Mongolian culture and rules.

Célia MAGRAS VERGEZ, *La constance des stigmates de la faillite, de l'Antiquité à nos jours (The persistence of stigma in cases of bankruptcy, from Antiquity to the modern day)*, ed. L.G.D.J. The evolution of bankruptcy law is aimed at the reestablishment of the business owner and the company. But this goal is very difficult to achieve in practice. Most of time, the debtor feels shame and guilt. It is important to consider the history of this stigmatisation in order to provide an intellectual basis for bankruptcy law.