

## *Chronicle of Research in Legal and Constitutional History in France in 2020*

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

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

Over the course of 2020, academic studies and works in the area of legal and constitutional history in France were affected by COVID-19 outbreak and sanitary crisis. Nevertheless, it would be exaggerated to consider 2020 as a blank year.

### 1. French answer to sanitary crisis: A state of health emergency

State reaction to COVID-19 outbreak illustrates a major subject of State theory and history: the sovereignty. Among several meanings of this concept, the first thinkers of sovereignty (Bodin, *The Six Books of the Republic*, 1576; Hobbes, *Leviathan*, 1651) developed a material conception, known as the supreme power of State.

Policies held by Government to contain the outbreak generated numerous discussions on the scope and limitations of State power. The Government decisions were unprecedented and affected exercise of individual liberties. Their legal framework evolved for the outbreak: first State and Government decided to act, then was asked the question of the legal basis of its actions.

Just after the first ballot of municipal elections, the president of the Republic decided a general lockdown on March 17<sup>th</sup>. Formally, this decision was taken by a decree of Prime Minister funded on the doctrine of “exceptional circumstances” in absence of legislative framework. Then, an important legislation was adopted to give legal basis to a new state of health emergency (in comparison with the state of emergency decided following terrorist attacks – see our Chronicle of Research in Legal and Constitutional History in France

in 2016). A legislative act of March 23<sup>rd</sup> 2020, created in the French public health code gave to the President of the Republic and to the Government new legal prerogatives to declare state of health emergency in case of serious health threats and crisis.

On this basis, the Prime Minister can adopt a series of measures to drastically limit population movement, forbid meetings and social interactions, close down shops, cultural institutions and places of worship, etc. Since March 2020, those prohibitions are more or less intense following the evolution of the outbreak.

Most of decisions were challenged in court in front of French Constitutional Court (Constitutional Council) for legislative measures or in front of the supreme administrative Court (the Council of State) for governmental measures. Judges ruled that most of the legal frame decided to contain sanitary crisis was legal but fixed some limits which was criticized by one part of the authors who considered that proportionality test made by judge was insufficient.

Restrictions taken to fight Covid outbreak affected the ordinary course of academic life in 2020, as it affected each part of social life.

## 2. Conferences

Most of events were cancelled or reported due to the outbreak or were held by video-conference. For example, so far none of the meeting of the Roman Law Institute took place. The learned society, the Société française d'histoire du droit, quickly reacted and organized web conference but postponed its International Days to 2022.

## 3. Publications

Among numerous publications, it is possible to mention:

- *Au cœur de l'État, Parlement(s) et cours souveraines sous l'Ancien Régime* [In the heart of State, Parliament(s) and sovereign Courts under the Ancien Régime], ed. Isabelle Brancourt. Garnier, 2020. Proceedings of an international seminar held from 2011 to 2018. It deals with the concept of French Parliaments through an interdisciplinary approach. The aim of those studies is to demonstrate that French courts participated to the development of Modernity.
- Hachemi, Anissa. *Le juge administratif et la loi (1789–1889) (The judge and the administrative law 1789–1889)*. L.G.D.J, 2020. This book is the publication of the author's doctoral dissertation. It deals with the first period of administrative justice, after the French Revolution when judge is not yet really separated from administration. The legislator refused to act in administrative matters to let an important margin of appreciation to both Judge and Administration.
- Halpérin, Jean-Louis. *Histoire des droits en Europe de 1750 à nos jours* [History of laws in Europe from 1750 to nowadays]. Flammarion, 2020. This book is

a large and brilliant synthesis about the law evolution in Europe in a long time and comparative perspective. It is divided in four parts: the legal reversal of revolutionary period, the evolutions of the 19<sup>th</sup> century through the trade liberalization, the disruptions caused by the rise of fascism, the birth of soviet law and the evolutions of liberal states. The last part, confluences and pluralism, deals with contemporary evolutions of law in Europe.

- Potin, Yann. *Trésors, écrits, pouvoirs. Archives et bibliothèques d'État en France à la fin du Moyen Âge* [Treasures, writings, powers. State archives and library in France at the end of Middle Ages]. CNRS, 2020. This work focuses on the records of powers and how it is represented through the notion of treasuries. According to the author, libraries and archives are a specific kind of treasuries which contributed to the dignity and the authority of medieval power.
- Thireau, Jean-Louis. *Jus et Consuetudo. Recueil d'articles réunis en hommage* [Jus et Consuetudo. Collection of articles gathered in tribute]. Garnier, 2020. Jean-Louis Thireau was full professor first at Picardy University then at at Panthéon-Sorbonne University (Paris I). During his career, Prof. Thireau developed an important scientific production in different areas such as patrimonial family law, history of legal thought, Medieval and Roman Law and especially the extension of custom which he is specialist. This book collects in one volume the major scientific contributions made by Jean-Louis Thireau.

#### 4. Academic life

In 2020, four researchers were appointed full professor at the end of the competitive examination of aggregation of history of law directed by professor Jean-Louis Halpérin (by order of merit):

- Liêm Tuttle, Professor at Panthéon-Sorbonne University (Paris I), author of a doctoral thesis entitled *La justice pénale devant la Cour de Parlement, de Saint Louis à Charles IV (vers 1230–1328)* [Criminal justice in front of Parliament Court, from Saint Louis to Charles IV, 1230–1328].
- Victor Simon, Professor at Lille University, author of a doctoral thesis entitled *Les échelles du Levant et de Barbarie: Droit du commerce international entre la France et l'Empire ottoman (XVIème – XVIIIème siècle)* [The Marketplaces of Levant and of Barbary: International commercial law between France and Ottoman Empire, 16<sup>th</sup>–18<sup>th</sup> centuries].
- Jérôme Henning, Professor at Toulouse 1 Capitole University, author of a doctoral thesis entitled *Le radicalisme d'Edouard Herriot et la crise des institutions, 1905–1954* [(Edouard Herriot's radicalism and the institutions' crisis, 1905–1954)].
- Thérance Carvalho, Professor at Nantes University, author of a doctoral thesis entitled *La physiocratie dans l'Europe des Lumières: circulation et réception d'un modèle de réforme de l'ordre juridique et social* [(Physiocracy in the European Enlightenment: circulation and reception of a social and legal order reform model)].