

## *Chronicle of Research in Legal and Constitutional History in France in 2017*

**Keywords:** conference, publication, legal history, France, doctoral defences.

**Słowa kluczowe:** konferencja, publikacja, historia prawa, Francja, obrony doktoratów.

Over the course of 2017 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 having taken place in 2017.

### 1. Focus on the French presidential and legislative elections

The major constitutional event of 2017 was the presidential (April 23<sup>rd</sup> & May 7<sup>th</sup>) and legislative (June 11<sup>th</sup> & 18<sup>th</sup>) elections. Those elections are essential to the nation's constitutional functionality. The President of the Republic, referred to as 'the cornerstone of institutions' by Michel Debré, ensures "by his arbitration, the proper functioning of the public authorities and the continuity of the State" (article 5, French Constitution of the V<sup>th</sup> Republic of October 4<sup>th</sup> 1958). Since the constitutional reforms of 1962, led by General Charles de Gaulle, the head of State has been elected by direct universal suffrage on the basis of a simple-majority two-ballot system. The President's place in the institutions and the direction of the country was further enhanced by the constitutional reforms of 2000, which reduced the term of office from 7 to 5 years. The electoral cycle begins first with the election of the President of the Republic, following which legislative elections are organised. *De facto*, since the constitutional reforms of 2000, the majority elected at the *Assemblée Nationale* (National Assembly), by universal suffrage with a single member constituency system with two ballots, belongs to the President's political party or shares the same views. It is for this reason that constitutional law theorists have coined the expression 'presidential majority'.

The 2017 elections raised a number of paradoxes: the classical institutional scheme was replicated in an altered political universe. From a political point of view, a way to characterise those elections is that the traditional left-wing and right-wing government parties have collapsed – the political leaders from those parties did not qualify for the second ballot of the presidential election, and the total number of seats secured by the parties in the National Assembly was smaller compared to past elections. For example, on the left, the Socialist Party, to which former President François Hollande belonged, went from having 331 deputies in the National Assembly in 2012 to a mere 30 in 2017. This move away from the traditionally dominant parties has been to the advantage of the new President of the Republic, Emmanuel Macron, a newcomer to politics who drew on social-liberal and pro-European ideologies in founding a new party, *La République en Marche* (‘the Republic on the move’). It has benefitted extremist parties such as the *Front national* (‘National Front’, far right) and the *France Insoumise* (‘Rebellious France’, far left). However, from an institutional point of view, the legislative elections have been consistent with past elections to the extent that they have afforded a comfortable majority to the presidential party. Furthermore, the division of powers has not been upset and, in accordance with the spirit of the French Constitution, the executive branch remains powerful.

The comparative, historical, and constitutional aspects of those elections have been addressed in numerous papers, talks, and or conferences. This topic was a particular focus at the X<sup>th</sup> congress of the *Association française de droit constitutionnel* (French Association of Constitutional Law) which was held at the University of Lille on June 22<sup>nd</sup>–24<sup>th</sup>.

## 2. Conferences

Many events were held, including:

International Days of the *Société d’histoire du droit* (“Society of Legal History”) held in Tours in partnership with the François Rabelais – Tours University on June 1<sup>st</sup>–4<sup>th</sup> on the topic ‘liability’. An historical and international examination was conducted on the most important notions of liability law: the event giving rise to damage, the nature and extent of the damage, sanctions, exoneration, etc. Those working days, which combined legal history with culture, also provided an opportunity for attendees to visit emblematic places of the region of the *Châteaux de la Loire*. A gala dinner was held at the *Château d’Amboise*, a royal palace which was a residence of François I<sup>er</sup>, and where Leonardo Da Vinci is buried.

Also in the Loire area, the 69<sup>th</sup> conference of the International Commission for the History of Representative and Parliamentary Institutions, held in Orléans on September 5<sup>th</sup>–8<sup>th</sup>. The theme was “power, debates, and norms”. About 150 specialists of parliamentary history from around the world gathered to debate the issues over the course of a hundred talks. Presentations were divided into different workshops such as “Legal and institutional foundations of assemblies’ life”, “Procedures, parliamentary work, and the functioning of assemblies” or “The life of assemblies in times of war, crisis, and institutional transition”.

The *Association française des jeunes historiens du droit* (the “French Association of Young Legal Historians”), in partnership with the *Association des historiens du droit de l’ouest* (“Association of the Legal Historians of the West”) with the support of the Panthéon-Assas University organised a conference in Paris on June 23<sup>rd</sup> and 24<sup>th</sup> entitled “ordinary procedure, extraordinary procedure”. The aim was to analyse, through this famous procedural distinction from Roman law, the concept of the legal system, and its derogations and exceptions. Sessions based on different themes were planned, including civil procedure, administrative procedure, criminal proceeding, arbitration, canon law, Hebrew law, Muslim law, and political questions. The aim was to offer three perspectives for each of the subjects discussed, namely legal history, contemporary law, and the view of practitioners.

### 3. Publications

The Panthéon-Assas University publishers published two valuable collections of articles in tribute to Professors Eric Bournazel and Jean-Marie Carbasse. The book *Droits et Justices au Moyen Âge (Laws and Justices at Middle Age)* collects together Prof. Carbasse’s main articles mostly dedicated to the study of medieval criminal law. *Mutations (Mutations)*, the collection of Prof. Bournazel’s articles, shows the author’s concern for both feudal transformations, a subject in respect of which he is a major theoretician, and for the continuation of some feudal institutions under the monarchy.

- Martin Aurell, Yves Sassier (dir.), *Autour de Philippe Auguste (About Philip August)*, ed. Classiques Garnier. King Philip August is one of the most famous kings of medieval Christendom. His long reign (1180–1223) was punctuated with numerous conflicts with the Emperor and the pope, and offers a rich field of study from institutional, judicial, political, and diplomatic perspectives. With this collective book, the authors broaden accessibility to knowledge of this pivotal period of legal history.
- Edwige Keller-Rahbé (dir.), *Privilèges de Librairie en France et en Europe (Print Privileges in France and in Europe)*. This multidisciplinary book (legal history and history of books) deals with a remarkable study of the history of print privileges in France and in Europe during the 16<sup>th</sup> and 17<sup>th</sup> centuries.
- Thierry Sol, *Droit Subjectif ou Droit Objectif? La notion de ius en droit sacramentaire au XIIe siècle (Subjective Right or Objective Law? The Concept of Ius in Sacramentary Law during the 12<sup>th</sup> Century)*, ed. Brepols. The author’s aim is to determine the controversial issue in respect of which Michel Villey and Brian Terney have taken different views, namely the appearance of subjective rights by consulting sacramentary law of the 12<sup>th</sup> century.
- Thierry Lentz (dir.), *Napoléon et le droit (Napoleon and the Law)*, CNRS editions. A group of lawyers and historians establish a new overview of Napoleon’s importance in legal history.
- Aurelle Levasseur, *Définir la Rue Publique du Bas Moyen Âge. Contribution à l’Histoire du Droit Administratif des Biens (Conceptualise the Public Street*

*of the Late Middle Age. Contribution to the History of Administrative Property Law*), ed. Presses universitaires de Franche-Comté. The author demonstrates the existence of two functions of the public street in the Middle Ages: public good and government instrument. This analysis is made by focusing on the conventions and regulations governing medieval construction.

- Raphaël Cahen, *Friedrich Gentz 1764–1832, Penseur post-Lumières et Acteur du Nouvel Ordre Européen (Friedrich Gentz 1764–1832, Post-Enlightenment Thinker and Actor of the New European Order)*, ed. De Gruyter. This extraordinarily rich study of Friedrich Gentz, an important figure in post-enlightenment European history, amplifies and corrects the conventional image of Gentz as ‘Europe’s Secretary’.

## 4. Academic life

### 4.1. Academic degrees

During 2017, there were few teaching vacancies in legal history despite numerous doctoral thesis defences: the aggregation examination in the history of law is held every two years and professors of law are engaged following this competition. New professors of legal history will not be appointed until 2018, however, the following have been appointed as lecturers:

- Dr. Thérance Carvalho, Lyon III 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: Flow and Receipt of a Reform Model of a Social and Legal System)*.
- Dr. Elena Giannozzi, University of Montpellier, author of a doctoral thesis entitled: *Le bonus vir dans le droit romain (The bonus vir in Roman Law)*.

### 4.2. Death

Joseph Méléze-Modrzejewski’s (1930–2017) contribution to legal history is significant. Through his efforts, he strengthened academic ties between France and Poland in the field of legal history. Born in Lublin, he began his research in Warsaw in 1957. His first book, *Alexander the Great*, ed. Książka i Wiedza, was published in 1958. He continued his career in France and became doctor of law in 1970. As a leading expert in the law of antiquity, his main areas of research have been Hellenistic law and institutions, Roman law, and the Hebraic world. Méléze-Modrzejewski was involved in many editorial boards, scientific committees, and institutes where he played leadership roles. He received many awards and distinctions in France, Poland, and abroad. In particular, he was Knight of the Order of Merit of the Republic of Poland, a foreign member of the Polish Academy

of Sciences and Letters of Cracow (*Polska Akademia Umiejętności*, 1994), and a foreign member of the Polish Academy of Sciences of Warsaw (*Polska Akademia Nauk*, 1997). In France, he received recognition from the Academy of Moral and Political Sciences (*Académie des sciences morales et politiques* – the 2012 Victor Delbos prize), and the French Academy (*Académie française* – the 2012 François Millepierres prize). He was also doctor *honoris causa* of the University of Athens (2002).