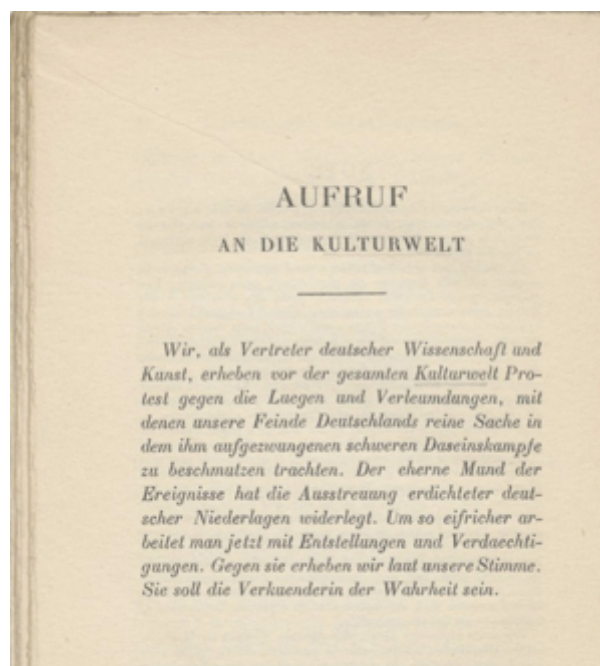

The Paris Faculty of Law denounces the violation of the law of nations by Germany

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From the beginning of the Great War, the professors of the Paris Faculty of Law denounced the “violation de tous les principes [violation of all the principles]” of the law of nations by the Germans, in particular the attack on the [neutrality of Belgium](#) which was guaranteed by treaties to which Prussia had subscribed. Didn’t Chancellor Bethmann-Hollweg, “descendant d’un des professeurs de droit les plus connus de l’Allemagne [descendant of one of Germany’s best-known law professors]” (Moritz Bethmann-Hollweg, one of Savigny’s students) say that “les traités ne sont que des chiffons de papier [treaties are nothing but scraps of paper]”? This “parole impie [unholy word]” was recalled by Dean [Larnaude](#) in his speech to his colleagues on 7 November 1914 on the eve of the resumption of classes. This fiery text of patriotism, which is

known to us from the registers of the Faculty of Law (National Archives, AJ/16/1799, pp. 103-106), was devoted, for the most part, to the “procédés de guerre de nos barbares ennemis [methods of warfare of our barbaric enemies]”. Without detailing what, in “l’invasion des nouveaux Barbares [the invasion of the new barbarians]”, was “des cruautés d’un cynisme révoltant [the cruelty of a revolting cynicism]”, “destruction” and “pillages systématiques sans nécessité militaire [systematic looting without military necessity]”, Larnaude intended above all to affirm that the outbreak of war and the “atrocités [atrocities]” were the “digne couronnement [worthy crowning]” of the doctrines taught by German universities. Particularly targeted were theories that have “détriqué les cerveaux allemands et déclenché, par leur mégalomanie, [...] les convoitises les plus audacieuses [unhinged German brains and triggered, by their megalomania, [...] the most audacious covetousnesses]”: the idea that force would take precedence over law, the appeal to the law of necessity (*Notrecht*), including to violate Belgian neutrality, and even the notion dear to Jhering of “end goal” that would justify the use of a policy of terror against civilian populations.

Such a strong reaction was intended to respond to the demonstrations by which the German universities had “pas craint de se solidariser avec un commandement militaire et une soldatesque dont les crimes sont flétris, à l’heure actuelle, jusque dans les coins les plus reculés du monde civilisé ! [not been afraid to show solidarity with a brutal military command whose crimes are being withered, at the present time, even in the remotest corners of the civilized world!]” With these words, Dean Larnaude was certainly referring to the various manifestos co-signed by German academics to support their army against the attacks, mainly of the British press, to which it had been subjected following the “sack of Leuven”. From August 25 to September 2, 1914, the German army, claiming to be responding to sniper fire, had carried out executions, arrests and expulsions of civilians, looted and burned the city, including its university library and archives. The sack of Leuven, with more than 240 victims among the Belgian population, made the English press talk of a “holocaust” and makes Kipling say that then “Hun est à nos portes [Hun is at the gate]”. As the fire in the library and the loss of medieval manuscripts had particularly moved academics around the world, German professors took the initiative to respond by denying the reality of these war crimes and claiming that their army defended the civilization of Goethe, Beethoven and Kant against “les Nègres et les Mongols [the Negroes and the Mongols]”. On the initiative of writer Ludwig Fulda and the friends of the Goethe Society, the protest

movement against “British slander” quickly gained internationally renowned law professors such as Kohler and Liszt at the University of Berlin (declaration of September 7, 1914). It was, then, the *Aufruf an die Kulturwelt* or “Manifesto of the 93”, signed on October 4, 1914 by ninety-three German “scholars” including jurist Kripp, rector of the University of Berlin, Liszt and the famous professor of public law of the University of Strasbourg, Paul Laband. On October 16, 1914, the *Erklärung der Hochschullehrer des Deutschen Reiches* gathered more than 3,000 signatures from German academics, including 224 professors from the 22 law schools, i.e. almost all sitting professors.

The Paris Law Faculty did not seek to respond with a counter-petition, and Larnaude's speech, delivered before twenty-nine of his colleagues, did not receive the media coverage of the German academics' declaration. At the very most, the Paris Law Faculty rallied, along with the entire University of Paris, to a declaration by fifteen French universities addressed on November 3, 1914 to neutral countries, asserting that “civilisation n'est pas l'œuvre d'une seule nation, mais de tous les peuples [civilization is not the work of a single nation, but of all peoples]”.

The spokesman of the Paris Faculty of Law, on these questions of international law, was [Louis Renault](#) (1843-1918), the first professor of the faculty to receive the Nobel Peace Prize in 1907, before René Cassin in 1968. Originally from Burgundy, close to Bufnoir who perhaps attracted him as a student in Paris, Louis Renault was granted tenure in 1868 at the age of twenty-five and, after a visit to Dijon, quickly called to Paris in 1873 to replace Charles Giraud in the teaching of the law of nations. He first became known through *Le Précis de droit commercial* (2 vols., 1879-1885 for the first edition), written with Charles Lyon-Caen. A collaboration that was coupled with a friendship with the man who was the first Jewish professor at the Paris Law Faculty and a dean forced to resign by an anti-Semitic campaign by Action Française students in 1910. Meanwhile, Louis Renault, author of an *Introduction à l'étude du droit international* [Introduction to the Study of International Law] (1879) rather dull compared to German works of the same period, distinguished himself as a French delegate at The Hague in the negotiation of conferences on private international law and of the two major conventions of 1899 and 1907 on the laws of armed conflicts, the first by 26 states and the second by 44 states.

It has been somewhat forgotten that these [Hague Conventions](#) were ratified by all the belligerents of the first, and even of the second, world conflict. Their preamble included the famous “Martens clause”: pending the realization of a “code plus complet des lois de la guerre [more complete code of the laws armed conflicts]”, this clause states that “les populations et les belligérants restent sous la sauvegarde et sous l’empire des principes du droit des gens, tels qu’ils résultent des usages établis entre nations civilisées, des lois de l’humanité et des exigences de la conscience publique [the populations and the belligerents remain under the safeguard and under the empire of the principles of the law of nations, as they result from the usages established between civilized nations, the laws of humanity and the requirements of the public conscience]”. As early as October 16, 1914, in a reading entitled “La guerre et le droit des gens au vingtième siècle [War and the law of nations in the twentieth century]” and given to the Institut de France (reproduced in the *Journal du droit international*, de Clunet, 1915, pp. 7-24), Louis Renault protested against the “abominable acts” committed by the Germans and recalled that they were bound by the Hague Conventions. The violation of Belgian and Luxembourger neutrality and the arbitrary treatment of civilian populations constitute, for Louis Renault, a “méconnaissance générale et systématique de toutes les règles solennellement adoptées [general and systematic misunderstanding of all the rules solemnly adopted]”.

On February 13, 1915, Louis Renault gave a lecture at the École libre des sciences politiques, where he taught, on “L’Allemagne et le droit des gens [Germany and the law of nations]”, which was published in *La Guerre: conférences organisé par la Société des anciens élèves et élèves de l’École libre des sciences politiques* (Paris, Félix Alcan, 1915). Renault showed his knowledge of German jurists, including pacifist Schücking, whose isolated courage he praised. He reiterated that Germany had committed to respect the Hague Conventions and repeatedly violated them, in particular by undermining the neutrality of Luxembourg and Belgium. The courage of Belgium was praised with a quote from Bergson, who saw it as a brilliant manifestation of “morality”. In the face of these German “atrocities”, international law was devoid of direct sanctions and the appeal to public opinion was insufficient according to Louis Renault. The latter, however, defended the possibility of bringing to trial the German soldiers taken prisoner and found responsible for crimes against civilians. The perpetrators of acts contrary to the law of nations were “des assassins, des pillards, des voleurs et pas autre chose [murderers, looters, thieves and nothing else]”. In the event of a future advance by

French troops, Renault formally advised against “tuer des femmes, des enfants, des vieillards quoiqu'on ait tué des femmes, des enfants, des vieillards chez nous [killing women, children, elderly people, even though they have killed women, children, elderly people in our country]”. Quoting Cardinal Mercier, Renault called, in conclusion, for a peace that would also be the “punishment” for the crimes committed.

This penal aspect was developed in May-June 1915, during a communication by Louis Renault to the Société générale des prisons, also published in the *Clunet* under the title “De l'application du droit pénal aux faits de guerre” (*Journal du droit international*, 1915, p. 313-344). In order to deal in an “exposé tout juridique [entirely legal presentation]” with the “actes imputables aux armées allemandes et autrichiennes [acts imputable to the German and Austrian armies]”, Louis Renault argued, the cooperation of international law and criminal law was necessary: “le droit international doit d'abord indiquer les limites dans lesquelles le droit pénal doit ou peut se mouvoir [international law must first indicate the limits within which criminal law must or can move]”. In the absence of State-to-State criminal law, it was in accordance with the Hague Conventions to try enemy servicemen guilty of violation of the law of nations. These conventions established a criterion accepted by the signatories on the prohibitions of the laws of armed conflicts and allowed States to apply the sanctions of their national law to these crimes under international law. This is what France did with the law of July 24, 1913, revising the Code of Military Justice. Without falling into the excesses of reprisals, without any illusion about the delivery of the “grands coupables [great culprits]” after the conclusion of peace, Renault defended the jurisdiction of the military justice of the country of the victims (*jure loci*) to judge the war criminals taken prisoner.

In 1917, Louis Renault published a pamphlet for the Committee for the Defense of International Law entitled *Les Premières Violations du droit des gens par l'Allemagne. Luxembourg et Belgique* [The First Violations of the Law of Nations by Germany. Luxembourg and Belgium]. For the internationalist, it was a question of showing that the violation of the neutrality of these states constituted an initial crime undermining the demands of humanity and announcing “multiple crimes” committed by the German military authorities during the war. This was an opportunity for Renault to attack German legal doctrine, especially Zitelmann, but again sparing pacifist Schücking. Louis Renault died on February 8, 1918 before the end of hostilities and his article on the application of criminal law to acts of war was reproduced in full in the *Revue générale du droit*

international public (1918, p. 5-29) which ensured him a broader audience, as shown in his quotation by Kelsen in the 1940's.

Legal adviser to the French delegation to the Peace Conference, Larnaude presented, with his [colleague Albert de Geouffre de La Pradelle](#), a report to Clemenceau which was published in the *Journal du droit international* in 1919 under the title « Examen de la responsabilité pénale de l'empereur Guillaume II » [Examination of the criminal responsibility of Emperor William II] (pp. 131-159). The use of prohibited weapons, such as gas, the massacre of hostages, the destruction of cities and ships with civilian casualties were, according to these perpetrators, war crimes that could bring the victors before the national courts. However, Larnaude and Geouffre de La Pradelle nuanced Renault's positions by considering that the provisions of French law were ill-suited to these crimes, especially to prosecute William II, who was not the physical executioner of these crimes. Faced with the new challenge "aux lois essentielles de l'humanité [to the essential laws of humanity]" represented by these international crimes, according to the two authors, an international tribunal was needed, without waiting for the establishment of the institutions of the League of Nations, judges of the countries of the Entente. As chief of the army, issuing orders without countersignature, William II was criminally and civilly responsible and Laband's writings (translated into French before the war with a preface by Larnaude) were cited in support of this thesis. "Un droit international nouveau est né [A new international law has been born]", thanks to the conscience of the peoples and the action of President Wilson; it was legitimate to give him the support of a jurisdiction to judge the former emperor. These ideas influenced Part VII of the Treaty of Versailles on sanctions, notably Article 227 providing for the trial of William II for "offense suprême contre la morale internationale et l'autorité sacrée des traités [supreme offense against international morality and the sacred authority of treaties]" before a court composed of five judges of the Great Powers of the Entente. Not only did this project fail in the face of the Netherlands' refusal to extradite the former emperor, but the vague wording of this article drew much criticism. Rather, it was Renault's thesis, disseminated through the translation of his first article in the *American Journal of International Law* (1915, pp. 1 et seq.), then taken up by American professor of political science James Wilford Garner (*International Law and the World War*, London, Longmans, Green and Co., 1920, p. 1) that circulated among the jurists interested in the matter. When the crimes of the Nazis far surpassed the atrocities blamed on the Germans during the Great War and led to the creation of new categories

of crimes against humanity and genocide, Louis Renault was quoted and discussed by Kelsen. Beyond their patriotic rhetoric, the thoughts of the professors of the Paris Faculty of Law had contributed to bring legal elements in support of the demand for justice with regard to war criminals.

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