University of Dundee

Beyond the Reach of Law? Criminal Prosecution of Parisian Police Personnel, 1872-1914

Johansen, Anja

Published in:
Journal of Modern History

DOI:
10.1086/710309

Publication date:
2020

Document Version
Peer reviewed version

Link to publication in Discovery Research Portal

Citation for published version (APA):
Johansen, A. (2020). Beyond the Reach of Law? Criminal Prosecution of Parisian Police Personnel, 1872-1914. *Journal of Modern History*, *92*(3), 485-520. https://doi.org/10.1086/710309

General rights
Copyright and moral rights for the publications made accessible in Discovery Research Portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from Discovery Research Portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain.
- You may freely distribute the URL identifying the publication in the public portal.

Take down policy
If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

Download date: 08. Dec. 2021

Beyond the Reach of Law?

Criminal Prosecution of Parisian Police Personnel, 1872-1914.[*]

I. INTRODUCTION

In August 1903 two Parisian plain clothes police officers from the notorious vice squad were convicted of illegal arrest, violence and assault (*Arrestation arbitraire, violence et voie de faits volontaires*) in the so-called Forissier Affair. What happened during the encounter itself, including the allegations of police violence and illegal arrest, was not particularly unusual for police-public relations in Paris. The case was unique because the two policemen subsequently faced criminal prosecution. During the French Third Republic, it was near impossible to prosecute police personnel for acts relating to their professional functions, such as illegal arrest, misuse of power, violence, manslaughter, and perjury. And while the Third Republic gave the majority of the male population a stake in democratic politics, citizens remained largely powerless in keeping public officials, including the police, accountable to the Penal Code. France was, of course, not the only European country where the overwhelming majority of alleged police illegality went unpunished. Lack of meaningful police accountability to the law

[*] I would like to thank René Lévy and Clive Emsley for their useful suggestions and constructive criticism, as well as Jean-Marc Berlière and Fabien Jobard for providing valuable details on specific points. Also, my thanks to the Marc Bloch Center in Berlin for providing a stimulating intellectual environment when developing this article alongside my research on criminal prosecution of police personnel in Wilhelmine Germany.

was, and remains, a persistent problem in many countries.[1] Yet, within this overarching pattern, the almost complete absence of prosecutions in the French Third Republic stands out,[2] not only in comparison with contemporary Britain, but, more surprisingly, also with Prussia.[3] In both these countries courts played an increasing role in keeping police personnel accountable to the law, and in settling civil disputes with citizens.[4]

Patterns of prosecution against police personnel are significant for comparing governance because prosecution rates indicate the willingness of regimes to allow citizens to challenge public servants and have transparency around the handling of serious complaints. The way the Third Republic managed conflicts between police personnel and aggrieved citizens therefore reflects a significant aspect of how the Republic continued to exclude its citizens despite the democratisation of the political institutions. Furthermore, historians and

---

[1] Samuel Walker and Carol Archbold, *The New World of Police Accountability* (Los Angeles, 2014), 50; Tim Prenzler, *Police Corruption* (Boca Raton, 2009); Petter Gottschalk, *Police Management: Professional Integrity in Policing* (New York, 2010), xii; Christopher J. Harris, "The Residual Career Patterns of Police Misconduct," *Journal of Criminal Justice*, 40 (2012), 323-332.

[2] For figures on the persistence of low rates of prosecution of police personnel in France, see Fabien Jobard, *Bavures policières? La force publique et ses usages* (Paris, 2002) 257.

[3] This research emanates from a wider project comparing citizens' access to complain about the police in London, Berlin and in Paris, 1880-1914. I am referring to 'British' policing, as including England, Wales and Scotland – but not Ireland, where the foundations for police accountability differed. As policing within the German Empire was organised at the level of federal states, references will be made here to Prussia, rather than the German Empire.

[4] Between 1884 and 1913, the Old Bailey in London prosecuted at least sixteen cases against members of the London Metropolitan police personnel. Many other cases from London were heard at the Sussex Crown Court, and the lower magistrates' courts. At the Prussia Landgerichte, which handled serious cases of crime, there were no less than 556 prosecutions of police personnel between 1899 and 1905, leading to 400 convictions. Anja Johansen, "Policemen in the Dock: Criminal Prosecution of Police Personnel in Wilhelmine Prussia", *Crime, History & Societies/ Crime, histoire & sociétés*, 23 no.2 (2019).

police scholars have tended to assume that democratisation of a political regime would lead to greater police accountability.[5] However, the comparison of the French Third Republic with Wilhelmine Prussia and Victorian/Edwardian Britain shows that citizens' access to keep police personnel to account was unrelated to levels of democratisation of the political institutions. While British and Prussian citizens gained greater access to have their grievances against the police heard in court between the 1880s and 1914, the position of French citizens to challenge police personnel was as weak by 1914 as it had been in the 1870s. It is important to note that the non-prosecution of French police personnel continued long time after the Republic had stabilised, and that the criminal allegation against police which were presented to the public prosecutor invariably came from citizens who posed no threat to public order or to the stability of the Republic.

This article has four objectives: the first is to establish evidence – as far as possible – of the extreme rarity of criminal prosecution of French police personnel. The estimated levels of non-prosecution of police personnel presented here cover all France and includes all types of policing personnel (the Paris and Lyon state police, and from 1908 also the Marseilles police forces; the *gendarmerie*; and municipal police forces). While more research is needed on the factors leading to non-prosecution of police personnel outside the Paris, the outcome was everywhere the same. The rest of the analysis in this article refers specifically to the Paris police force. The second objective is to shed light on the legal-procedural framework and

[5] Hsi-Huey Liang, *The Rise of modern police and the European state systems from Metternich to the Second World War* (Cambridge, 1992); David Bayley, "The Police and Political Development in Europe", in *The Formation of the Nation State in Western Europe*, ed. Charles Tilly (Princeton, 1975); For police scholars making this connection for more recent periods see: Robert Reiner, *The Politics of the Police* (4th ed.) (Oxford, 2010) chap.3; David Bayley, *Changing the Guard: Developing democratic police abroad* (Oxford, 2006); Peter Manning, *Democratic Policing in a Changing World* (Boulder, 2010).

administrative practices that were used to obstruct criminal prosecution against members of the Paris police force. The third objective is to examine how the judiciary (public prosecutors, investigating magistrates and court judges) worked with the police prefect of Paris to prevent allegations against police personnel from reaching the courts. This is illustrated through three well-documented cases from Paris: the Nuger case of 1893 concerning accidental death during a major police intervention against student protesters; the case of the worker Zirn, who died in police custody in 1912; and the Forissier case of 1903 concerning police violence and illegal arrest, which exceptionally led to a trial. The fourth objective is to examine how civil liberties campaigners, notably the League of Human Rights (*La Ligue des droits de l'homme*, hereafter LDH), challenged police and the judiciary over their refusal to hold policemen accountable to the law.

The extremely low rate of prosecution against police personnel in the French Third Republic exemplifies the discrepancy between the high-minded republican ideals and the reality of citizens' disempowerment. The non-prosecution of police personnel also suggests that – while providing a convenient way out of potentially embarrassing problems – in the long run it seriously undermined attempts to strengthen public trust in the police and police legitimacy. Yet, while prosecution was almost impossible, the Forissier case and a few attempts at civil suits also show that the Paris police and criminal justice system in the early 20th century were under increasing pressure to become more transparent and accountable to the law.

II. REPUBLICANISATION OF POLICING AND BLIND-SPOTS IN THE HISTORIOGRAPHY

Until the 1990s, historical interpretations have been overwhelmingly negative about French policing. Left-leaning scholars have criticised the Third Republic for its heavy-handed police approaches to the public, questioning whether this could be justified in the name of '*l'ordre républicain*'. However, these interpretations focus mainly on protesters and policing strategies, not on the underlying structures of discipline and accountability.[6] Since the 1990s, the negative interpretations of French police and *gendarmerie* have been fundamentally reassessed by Jean-Marc Berlière and Jean-Noël Luc. Together with a younger generation of historians they have revised our understanding of policing as a profession as well as the internal functioning of French police forces and *gendarmerie* from the 18th to the 21st centuries.[7] Yet, while their extensive research has shown that discipline was strengthened during the Third Republic, when police and *gendarmerie* became subjected to elected ministers, police accountability to the law is rarely mentioned[8] and citizens' complaints constitutes at best small sections in main syntheses on French policing.[9] Berlière's research on the vice squad analyses police

---

[6] Philippe Vigier (ed.) *Maintien de l'ordre et polices en France et en Europe au XIXe siècle* (Paris, 1987); Madeleine Rebérioux (ed.), *Fourmies et les premiers mai* (Paris, 1994); Patrick Bruneteaux, 'Le désordre de la repression en France, 1871-1921', *Genèses*, 12 (1993) 32-55; idem, *Maintenir L'ordre: Les transformations de la violence d'État en regime démocratique* (Paris, 1996).

[7] Jean-Marc Berlière, Catherine Dénys, Dominique Kalifa, Vincent Milliot (eds.) *Métiers de police* (Rennes, 2008); Quentin Deluermoz, *Policiers dans la ville: La construction d'un ordre public à Paris, 1854-1914* (Paris, 2012); Laurent Lopez, *La Guerre des polices n'a pas eu lieu* (Paris, 2014); see also special issue of *Revue d'histoire du XIXe siècle*, Quentin Deluermoz, Arnaud Houte and Aurélien Lignereux (eds.) "Société et forces de sécurité au XIXe siècle", 50 (2015). On the French *gendarmerie* see Jean-Noël Luc (ed.) *Gendarmes, État et société au XIXe siècle* (Paris, 2002); ibid. *Histoire des gendarmes, de la maréchausée à nos jours* (Paris, 2016).

[8] The most detailed analysis is Jean-Marc Berlière, "L'Institution policière en France sous la IIIe République" (unpublished thèse d'état, University of Dijon), 1991, 369-411.

[9] Jean-Marc Berlière and René Lévy, *Histoire des polices en France de l'Ancien Régime à nos jours* (Paris, 2013) ch.6; Malcolm Anderson, *In Thrall to Political Change: Police and Gendarmerie in France* (Oxford, 2011) 31-

transgressions of the law and public outrage, but says little about attempts at prosecuting erring officers.[10]

Berlière's overall interpretation, which has influenced much of current scholarship, is a positive narrative that strongly emphasises improvements in professionalization and discipline among police personnel between 1870 and 1914.[11] Berlière argues that it was the process of republicanisation that led to greater police loyalty towards the regime and engendered modern professional norms in the approach to the public, with lower levels of violence and malpractice. He strongly emphasises that after the turn of the 20th century, French policing was far better than its reputation with increased acceptance and popularity, at least among the propertied classes.[12] While Berlière recognises the failure of the Third Republic to balance the need for public order against respect for citizens' rights and liberties, as well as persistent problems of violence and illegality in French policing, he links this to extensive police powers and incomplete republicanisation.[13] In his interpretation, the root cause of police

---

35 & 91; Deluermoz, *Policiers dans la ville*, 261-64. Christian Chevandier, *Policiers dans la ville* (Paris, 2012) is mainly focused on police perspectives.

[10] Jean-Marc Berlière, *La Police des moeurs sous la IIIe République* (Paris, 1992).

[11] Jean-Marc Berlière, "La professionalisation de la police en France: Un phénomène nouveau au début du XXème siècle", *Déviance et Société*, 11, no.1 (1987) 67-104; idem, "La professionnalisation: Revendication des policiers et objectif des pouvoirs au début de la IIIème république", *Revue d'histoire moderne et contemporaine*, 3 (1990) 398-428; idem, *Le Monde des polices* (Paris, 1996) 69-76.

[12] Jean-Marc Berlière, *Le Préfet Lépine: Vers la naissance de la police moderne* (Paris, 1993) 117-19; idem, "Images de la police: deux siècles de fantasmes", *Jahrbuch für europäische Verwaltungsgeschichte* 6 (June 1994), 125-140; Berlière and Lévy, *Histoire des polices*; For similar interpretations see Anderson, *In Thrall to Political Change*; Deluermoz, *Policiers dans la ville*; López, *Guerre des polices*.

[13] Berlière, "L'Institution policière", 369-411; idem "Police et libertés sous la IIIe République: le problème de la police des moeurs", *Revue Historique*, 283, no.2 (1990) 235-75; idem "L'impossible police parisienne", *Politix*,

malpractice and illegality therefore stems from the inability to fully install republican values into policing, rather than the persistently weak position of French citizens to confront and challenge police malpractice and illegality.

Deluermoz modifies Berlière's overall interpretation on three significant points: first, he argues that improvements in French police behaviour, rather than simply being the product of republicanisation, began already during the Second Empire and was part of a longer process of civilization; secondly, Deluermoz adopts a more critical assessment of the impact of republicanisation on French policing; and, finally, he places the modernisation of French policing within a broader comparative context with British and German developments.[14] Yet, Deluermoz looks at police-public relations mainly from the perspective of the police, paying scarce attention to the weak position of citizens. So while Deluermoz notes that the Paris police force, established by Napoleon III in 1854, was inspired by the London Metropolitan police,[15] he does not mention the two elements of the Peelite model which empowered the British public to challenge the police. These key features of the Peelite model were not transferred into the Paris police force in 1854 and the Third Republic subsequently made no attempt to empower citizens. In the Peelite model procedures that allowed members of the public to voice their concerns about acts – criminal or non-criminal – committed by police personnel constituted a

---

21, no.6 (1993) 33-51; idem "Du maintien de l'ordre républicain au maintien républicain de l'ordre", *Genèses*, 12 (mai 1993) 6-29.

[14] Deluermoz, *Policiers dans la ville*; idem, "L'Ordre est républicain", in *Une contre-histoire de la troisième République*, eds. Marion Fontaine, Frédéric Monier and Christophe Prochasson (Paris, 2013) 88; idem "Capitales policières, état-nation et civilisation urbaine: Londres, Paris et Berlin au tournant du XIXe siècle", *Revue modern et contemporaine*, 60, no.3 (2013) 55-85.

[15] Deluermoz, *Policiers dans la ville*, 32-35.

central element in legitimising the London Metropolitan police since its inception in 1829.[16] In Prussia, formal procedures for handling non-criminal complaints against the police were introduced in 1883, which gave aggrieved Prussians formal legal status and some basic rights to have their complaints investigated and to be informed about the outcome.[17] In France, no formal complaints procedures existed until the early 21st century.[18] During the Third Republic, disgruntled citizens complained incessantly at police stations, or through letters to the police prefect and the interior minister; however, French complainants had no legal status and the police was under no obligation to investigate. Another central legitimising feature in the Peelite police model was the emphasis on police being accountable to the law. In Britain, disputes were frequently being heard by the magistrates' courts, and serious cases were forwarded to the Assizes, the Quarter Sessions or the Old Bailey in London. In Prussia, the increasing importance of the police operating within the law (*Rechtsstaatsprinzip*) gave the courts a central role both in settling civil disputes between individual citizens and public officials, and in processing criminal allegations, including thousands of cases involving police personnel.[19]

---

[16] Select Committee, *Report on the Police of the Metropolis* (1834) Parliamentary Papers (600) vol.XVI, 8-9. For the complaints procedures of the late 19th century, see relevant entries in Howard Vincent, *A Police Code and Manual of the Criminal Law* (London, 1881); David Taylor, *The new police in nineteenth-century England: Crime, conflict and control* (Manchester, 1997) 77.

[17] *Landesverwaltungsgesetz*, July 30, 1883, articles 127-134. For details see Bernhard von Kamptz, *Beschwerde und Klage sowie sonstige Rechtsmittel gegen polizeiliche Verfügungen und Zwangsmassregeln* (Berlin, 1894) 23-33 & 55ff.

[18] *Le Comité nationale de déontologie de la sécurité* was voted in 2000, and established as the first French police complaints body in 2001.

[19] Albrecht Funk, *Polizei und Rechtsstaat: Die Entwicklung des staatlichen Gewaltmonopol in Preußen, 1848-1918* (Frankfurt, 1986); Ann Goldberg, *Honor, Politics and the Law in Imperial Germany* (Cambridge, 2010); Johansen "Policemen in the dock".

In France, the lack of accountability to the law shaped not only how police approached the public, but also popular attitudes to the police. So while Berlière and Deluermoz both emphasise the increasing popularity and acceptance of the police, at least among the propertied sections of the population,[20] this did not develop into a relationship of trust. New professional norms undoubtedly led to overall improvement in police behaviour, but popular distrust and the expectation that police would, at any moment, engage in violent and illegal behaviour continued to dominate popular attitudes to the French police.

This article challenges the emphasis on incomplete republicanisation as the main cause of continued police malpractice and illegality. Instead, it highlights the consequences of the weak position of citizens in conflicts with the police, the unwillingness by successive republican government to strengthen the position of aggrieved citizens, and obstructions by the criminal justice system, which kept criminal allegations against police personnel effectively away from the courts. By focusing on the refusal by the Third Republic to reform the extremely asymmetrical power relationship between public servants and citizens, this article argues that the problem of continued police unaccountability was closely linked to the republican ideology itself, namely the systematic prioritisation of the authority of the Republic above the respect for citizens' rights and civil liberties. This places this interpretation in line with the critical reassessment of the French republican tradition that was opened in the 1970s by François Furet

[20] Berlière, *Lépine*; Deluermoz, *Policiers dans la ville*.

and Jean-Pierre Machelon[21], and continued in the 1990s by Rosanvallon.[22] Patterns of prosecution against police personnel adds an important aspect to current historical debates about the long-term implications of the Jacobin legacy in the Third Republic, which placed the interest of the Republic above respect for civil liberties,[23] and marginalised the liberal tradition that called for legal counterbalances against the overwhelming powers of the state.[24] While recognising that the republican values of the Third Republic succeeded in establishing modern democratic principles, [25] its short-comings negatively shaped the relationship between citizens and the police. Whereas the current historiography on French policing focuses almost exclusively on the failure to curb extensive police powers and break the extra-legal operations of the vice-squad, this article also emphasises the unwillingness of successive republican governments to strengthen citizens' access to challenge erring public servants through the courts.

---

[21] François Furet, *Penser la Révolution française* (Paris, 1978); idem, *La Révolution en débat* (Paris, 1999); Jean-Pierre Machelon, *La République contre les libertés?Les Restrictions aux libertés publiques de 1879 à 1914* (Paris, 1976).

[22] Pierre Rosanvallon, *Le Sacre du citoyen* (Paris, 1992/2001); idem, *Le peuple introuvable* (Paris, 1998/2002); idem, *La démocratie inachevée* (Paris, 2000/2003). See also Andrew Jainchill and Samuel Moyn, "French Democracy between Totalitarianism and Solidarity", *Journal of Modern History*, 76, no.1 (2004) 107-154.

[23] See contributions to Vincent Duclert and Christophe Prochasson (eds.) *Dictionnaire critique de la République* (Paris, 2002); Sudhir Hazareesingh (ed.), *The Jacobin Legacy in Modern France* (Oxford, 2002); Fontaine et al. (eds.), *Contre-histoire*.

[24] Alexis de Tocqueville, *L'Ancien regime et la révolution*, [origin, publ. 1856] (Paris, 1952); Furet, *Penser*; Lucien Jaume, *L'Individu effacé ou les paradoxes du libéralisme français* (Paris, 1997) 367-405.

[25] James Lehning, *To be a Citizen: The Political Culture of the Early French Third Republic* (Ithaca, 2001); Sudhir Hazareesingh, *Intellectual Fathers of the Third Republic* (Oxford, 2001); Jainchill and Moyn, "French Democracy".

III. AN INVISIBLE ASPECT OF POLICING: ABSENCE OF PUBLIC RECORDS AND ESTIMATES OF RATES OF PROSECUTION CASES

Despite the historiography on French policing paying much attention to police violence and illegality, the near absence of criminal prosecution against police personnel is rarely commented upon.[26] There are several reasons for this blind-spot in the historiography. In the first place, the issue is almost invisible in the public records. The files from the French Interior and Justice Ministries contain almost no relevant documentation, not even general discussions about the possibility of prosecuting police personnel.[27] Among the records from the Paris Police Prefecture there are a substantial number of criminal allegations against police personnel, which members of the public sent to the public prosecutor. However, as these complaints were systematically forwarded to the police and handled as disciplinary cases, the criminal allegations are buried alongside hundreds of non-criminal complaints.[28] Discussions of prosecution against police personnel is also absent from the minutes of the Paris municipal council, which was one of the main fora for critical debates on police malpractice. Extensive searched of the digitised minutes from the municipal council of Paris published in *Le Bulletin*

---

[26] Berlière provides an excellent and detailed description of the legal-procedural framework, but does not comment on actual cases. Berlière, "L'Institution policière" 369-401.

[27] Archives Nationales (hereafter AN), série BB, contains no cases of this nature; The 'Fond Moscou' contains a number of disciplinary cases from the interwar era, none of which led to criminal prosecution. Nor has any case been found relating to the gendarmerie, which fell under the resort of the War Ministry.

[28] Archives de la Préfecture de Police, Paris (hereafter APP), BA 1554, *Plaintes contre les commissaires 1896-1906*; APP, BA 899, *Plaintes contre les commissaires de police et le personnel des commissariats 1907-1911*.

municipal officiel de la ville de Paris reveal no mentioning of criminal prosecutions of police personnel, beyond the few known cases. The internal publication for police managers, *Journal des Commissaires de Police*, is equally silent on the topic. Because a lot of research is required even to demonstrate that prosecution happened extremely rarely, it has been difficult for police historians to contextualise the few known incidents. Although Jean-Marc Berlière is well familiar with the Forissier case, he mentions it only in relation to debates about the vice squad, while his analysis of the legislation leads him to conclude that the articles in the Penal Code, which criminalised certain police acts, were never enforced in practice.[29]

Although it is extremely difficult to estimate an approximate number of criminal prosecutions against the police, all available sources point towards the conclusion that this happened extremely rarely. No statistics exist on this phenomenon and the official court publication, *La Gazette des Tribunaux*, which lists all verdicts from French courts, is of little use as it only mentions the names of the defendants, not their professions. One significant clue to the rarity of prosecutions against police personnel appears in a register of all the cases presented to the public prosecutor of Paris that were subjected to preliminary investigation, but eventually not brought to trial (*non-lieu*). Between 1871 and 1914 there is but one single case in which the suspect was registered as a policeman.[30] This was the highly publicised Nuger case of 1893, which will be analysed below. Given the frequent allegations of police illegality made by members of the public, this is a staggeringly low rate of investigation. Another important clue is provided by the campaigner Louis Fiaux. In an appendix to his book on the

[29] Berlière, "Institution policière", 396. Machelon makes the same point for public servants generally, noting that the articles 114-118 in the Penal Code concerning the criminal responsibility of public officials (fonctionnaires) were almost never used. Machelon,, *République contre les libertés?* 161-62.

[30] Archives Départementales de Paris (hereafter ADP), D3U6, box 46, 'Emeutes du Quartier Latin, mort du Sieur Nuger, tué accidentalement par un pot d'allumettes lancé par une main inconnue'.

1903 extra-parliamentary inquiry into the policing of prostitution, Fiaux provides a list covering the years 1877 to 1899. He identifies forty-four cases, from all over France, of known criminal acts committed by police personnel from all types of forces including the *gendarmerie*, as well as illegal acts committed by mayors in their capacity as responsible for municipal police forces.[31] Although many of these allegations concerned very serious offences, the police personnel involved were simply dismissed or retired, with only one case leading to criminal prosecution.[32] In addition, there were a limited number of cases where policemen were prosecuted and convicted for criminal acts that were unrelated to their professional functions.[33]

These extremely low numbers are in line with evidence provided by the LDH. Between 1898 and 1914 the LDH repeatedly sought to bring criminal charges or civil suits against policemen and police managers, but failed in all but two of the ninety-nine cases that they supported.[34] The LDH was unquestionably the organisation with the most extensive information and experience in the criminal prosecution of civil servants, including police personnel. So when the LDH stated in 1908 and again in 1910 that the Forissier case of 1903 was the only known criminal prosecution against police personnel since the establishment of the LDH in 1898, this is probably the closest we can get to a reliable assessment of the limited

---

[31] Louis Fiaux, *Police des moeurs devant la Commission extra-parlementaire du régime des moeurs* (Paris, 1907), 611-621.

[32] "Affaire de Jean-Baptiste D…", in which a former deputy station master appeared before the assizes court of the Lower Pyrenees in November 1886. Fiaux, *Police des moeurs*, 613.

[33] In 1879 a policeman was convicted of two gruesome murders, both unrelated to his professional functions, see Jean-Marc Berlière, "La cervelle du gardien de la paix" in *Juges, notaires et policiers delinquents*, ed. Benoît Garnot (Dijon, 1997), 141-160. Similarly, in April 1911 Inspector Louis Warzé was jailed for seven years for involvement with a gang of house-breaker; see Berlière, *Police des moeurs*, footnote 247. In addition, a number of police officers were prosecuted for financial corruption unrelated to their professional functions.

[34] The Forissier case of 1903 and the Favre case of 1904.

number of cases.[35] Similarly, Yves Guyot, who closely observed police malpractice throughout the period 1871-1914, mentions no incident of criminal prosecution in his multiple works, beyond the few known cases. Instead he stated repeatedly that complaints to the criminal justice system about police illegality were systematically ignored.[36]

Press reports frequently declared isolated court rulings as a victory for victimised citizens; however, these cases invariably turn out to be incidents where the courts threw out cases against members of the public because police statements were mutually conflicting or obviously untrue. Acquittal, and official recognition by a judge that police had lied in court and fabricated the evidence, was the best aggrieved citizens could hope to obtain as redress for police malpractice. Even in the face of blatant perjury by police – which was a criminal offence under articles 177-183 of the Penal Code – not one single case has been identified where perjuring police faced subsequent criminal prosecution. Whether policemen were disciplined for lying in court, remains unknown.

IV. POLICE CRITISM AND THE REPUBLICAN 'AWKWARD SQUAD'

[35] *Bulletin officiel de la ligue des droits de l'homme*, (hereafter *BOLDH*) 10-17 (Sept. 15, 1910) 1037-1088; *BOLDH*, 10-18 (Sept. 30, 1910) 1089-1152; *BOLDH*, 10-19 (Oct. 15, 1910). Similarly, the list of cases established in Mathias Morhardt, *L'Oeuvre de la Ligue des droits de l'homme, 1898-1910* (Paris, 1911), 139-144 & 164-165.

[36] Yves Guyot, "Révélations d'un ex-agent des moeurs," *La Lanterne*, (Oct-Nov. 1878); idem, "Lettres d'un vieux petit employé," *La Lanterne*, (Dec. 1878 to Jan. 1879); idem, *La Prostitution: Etudes de Physiologie Sociale I* (Paris, 1882); idem, *La Police: Etudes de Physiologie Sociale II*, (Paris, 1884), 19-20; 257, 278 & 308.

Criticism of police malpractice emerged in the early years of the Republic, not just from anti-republican forces, but from staunch republicans[37] who were disappointed that senior officials and elected politicians representing the new regime seemed to replicate the Second Empire in turning a blind eye to police violence and illegality. Drawing parallels between the police of Napoleon III and the Republic was provocative, given that republicans during the Second Empire had pointed to police brutality and illegality as evidence of the moral corruption of the imperial regime, and both Gambetta and Jules Ferry attempted to abolish the Police Prefecture and the Paris Police as their first acts in office.[38] Yet, throughout the 1870s and 1880s few attempts were made to strengthen police accountability to the law. The founding fathers of the Republic had other pressing priorities. Because the Third Republic was a nervous regime, particularly in the immediate aftermath of the *Commune*, republicans prioritised the urgent need to ensure the loyalty of the policemen, many of whom had previously worked for the Second Empire. So despite strong political will among republicans in 1870-1871 to reform the police and *gendarmerie* of the Second Empire to fit the new regime,[39] unreconstructed policing practices from earlier regimes were carried over into the 'governmentality' of the Third Republic, largely unaffected by the democratisation of the political institutions.[40] The insulation of police from any meaningful accountability to the law was allowed to persist because of the great ideological diversity among republicans and fundamental disagreements about what the relationship should be between the Republic and its citizens.[41] There was broad

[37] On the criticism and revelations by Guyot and Arthur Ranc, see Berlière, *Police des moeurs*, 133-55.

[38] Berlière, "L'impossible police", 33-51; idem, *Monde des polices*, 91-92.

[39] Lopez, *Guerre des polices*, 37-38.

[40] Berlière *Monde des polices*, 94-95. See also critique of the incomplete republicanisation of the French State: Machelon, *La République contre les libertés?*; Rosanvallon, *Démocratie inachevée*.

[41] Lehning, *To be a citizen,* 2-4; Hazareesingh, *Intellectual Founders*, 282-97.

agreement about principles such as the 'will of the people', as expressed through universal male suffrage, rule of law, supremacy of the law, secularisation, as well as individual liberties such as freedom of speech and freedom of worship. However, uncertainty arose over the balance between the powers accorded to those acting on behalf of the state and the protections granted to individual citizens against public officials. Although 'individual liberties' constituted key principles for most republicans, these liberties were frequently disregarded if they conflicted with what ministers saw as their duty to uphold the law and the republican order.[42] Legal provisions from previous regimes had allowed the interests of the regime and the powers of public officials to prevail over the rights of citizens, and the new power holders were reluctant to give up these tools, particularly in view of the fragile political situation during the 1870s and 1880s. So while the Republic promised to staunchly defend citizens' personal safety and property against crime and public disorder when committed by other citizens,[43] it avoided any commitment to guaranteeing citizens' rights against transgressions perpetrated by public officials. While dubious or illegal decisions by most types of public officials could be challenged through the administrative courts, transgressive acts committed by police personnel often fell outside the remit of the administrative courts as these dealt only with the legality of administrative decisions, not with how they were enforced. Moreover, as there was no access to private prosecution within the French criminal justice system, aggrieved citizens could not press charges against the will of the public prosecutor.[44]

[42] For critical perspectives on the supremacy of legislative powers see, Guillaume Sacriste, 'Le droit constitutionnel garantit le fonctionnement de la République' in Fontaine et al. *Contre-histoire*, 76-77; Jean-Pierre Machelon, "L'Autorité", in Duclert et al., *Dictionnaire critique*, 100-105.

[43] Berlière and Lévy, *Histoire des polices*, 186-205; Deluermoz "L'ordre est républicain", 83-96.

[44] Machelon *République contre libertés*, 161-6; idem, "L'Autorité", in Duclert et al., *Dictionnaire critique*, 101.

It was in this context that some staunch republicans embarked on repeated crusades against police malpractice, illegality and unaccountability. The most outspoken and persistent police critic was Yves Guyot, journalist and municipal councillor in Paris, described by Madelaine Rebérioux as an 'uncompromising liberal' (*liberal acharné*).[45] In 1878-1879, he published a series of anonymous letters in the journal *La Lanterne* revealing widespread malpractice and illegality within the Paris police force.[46] This led to a six months sentence for libel for him and his publisher Sigismond Lacroix, but Guyot continued undeterred during the 1880s with revelations about violations of citizens' rights and civil liberties in multiple publications on policing and on the treatment of prostitutes and the mentally ill.[47] He was an early member of Josephine Butler's 'International Federation for the Abolition of Regulated Prostitution', and worked closely with Louis Fiaux in his longstanding campaign against registered prostitution in France. Guyot also conducted a major campaign to subject the Paris police to oversight by the Paris municipal council. Yet, with the ascent of true republicans to government after 1879, the Paris municipal council lost whatever limited control they exercised over the police. By 1887, the Paris police prefect was much strengthened and only responsible to the interior minister.[48]

Guyot belonged to a minority among French republicans, whose approach to the rights of citizens against the State and emphasis on the need for effective guarantees of respect for civil liberties was in line with the thinking Tocqueville and the English liberal tradition of John

---

[45] Rebérioux, "Les Droits de l'homme", in Duclert et al., *Dictionnaire critique*, 162-7.

[46] Guyot, "Revélations"; idem, *La Préfecture de police par un vieux, petit employé: Procès de la Lanterne* (Paris, 1879).

[47] Guyot, *Prostitution*; idem, *Police*; idem, *Un fou* (Paris, 1884).

[48] Deluermoz, *Policiers dans la ville*, 226-7.

Stuart Mill.[49] So when Deluermoz describes respect of civil liberties in the British police rhetoric as a British peculiarity which was alien to French policing,[50] this is, of course, correct if we look only at the police rhetoric, government policies and criminal justice practices. However, Deluermoz overlooks how, in France from the 1870s onward, criticism of police malpractice and illegality was shaped by discourses about accountability and respect for citizens' rights. During the 1880s there were repeated attempts to form organisations for the defence and promotion of citizens' rights.[51] While the leagues of the late 19th century are mostly associated with the far-right,[52] some were firmly republican, promoting civil libertarian principles, even if they never formed a coherent ideology. They involved well-known

[49] On the minority approach to individual rights and civil liberties in the French liberal tradition: André Jardin, *Histoire du libéralisme politique* (Paris, 1985); Jaume, *L'Individu effacé*, 367-405; idem, "Aux Origines du libéralisme politique en France", *Esprit*, 243-6 (June 1998) 37-60; Jack Hayward, *After the French Revolution* (New York, London, 1991) 166-9; Sudhir Hazareesingh, *Intellectual Foundations of the Republic* (Oxford, 2001) 211-4; idem, "La fondation de la République: histoire, mythe et contre-histoire" in Fontaine et al., *Contre-histoire*, 245-6.

[50] Deluermoz, "Capitales policières" 62.

[51] 'La société protectrice des citoyens contre les abus', established in 1881 by the free mason Edmond Goupil, with members including Clemenceau and Victor Hugo; in 1887, Yves Guyot organised a French chapter of the British Personal Rights Association under the name 'Association pour la Défense des Droits Individuels'; in 1888 Clemenceau, Arthur Ranc and Jules Joffrin formed the anti-Boulangiste organisation 'La Ligue des droits de l'homme pour la défense des libertés publiques et du régime'; the same year, Henri Coulon, barrister at the appeal court of Paris formed 'La Ligue pour la défense de la liberté individuelle'. See also Rebérioux, "Droits de l'homme", [162-7] 164-5.

[52] Emmanuel Naquet, "Les Ligues", in Duclert et al. (eds.) *Dictionnaire critique*, [735-744] 735.

politicians, journalists and intellectuals, many of whom also joined the pro-Dreyfus campaign, and later reappeared in the LDH.[53]

The LDH emerged out of the pro-Dreyfus campaign as the largest civil liberties organisation anywhere in Europe, with considerable scope for challenging the republican authorities over police malpractice and unaccountability. It benefitted from substantial financial and investigatory resources, and enjoyed significant influence within the republican establishment. Its more than 50,000 members included many lawyers, some of whom occupied senior positions within the judicial professions or were very distinguished legal scholars. Among its members we also find numerous politicians - including parliamentarians, senators and several former government ministers – as well as university professors, public intellectuals, journalists and newspaper proprietors.[54]

With the rapid expansion of the French press and the rise of mass-literacy, connections to the press became crucial for mobilising public opinion.[55] However, the media were highly fragmented in their attitude towards police malpractice and accountability. As a result, press coverage of individual cases and campaigns were highly partisan and divided along political lines, so any categorisation of publications on this issue is tentative and allegiances underwent

---

[53] Emmanuel Naquet, "La Ligue des droits de l'homme, une association en politique 1898-1940" (Unpublished Thèse de doctorat, Institut des Études Politiques de Paris, 2004). While the LDH took a turn towards socialism after 1903, its founding fathers were overwhelmingly non-socialist civil libertarians. See François Furet, *Le Passé d'une illusion* (Paris, 1995) 115.

[54] Anja Johansen, "Defending the Individual: The Personal Rights Association and the Ligue des droits de l'homme, 1871-1916", *European Review of History*, 20-4 (Aug. 2013) 559-579; William Irvine, *Between justice and politics: the Ligue des droits de l'homme* (Stanford, 2007).

[55] Dominique Kalifa, Marie-Ève Thérenty & Alain Vaillan, 'Le Quotidien' in Dominique Kalifa, Philippe Régnier, Marie-Ève Thérenty & Alain Vaillan, *La civilisation du journal: Histoire culturelle et littéraire de la presse francaise au XIXe siècle* (Paris, 2011) 292-293.

changes over time.[56] The newspapers least involved in criticising the police were the most widely circulated publications, *Le Petit Parisien* and *Le Petit Journal*, together selling close to two million copies in 1904.[57] As they specialised in sensation and crime, they depended on a cosy relationship with police and detective forces, and tended to treat the police as heroes against crime and political subversion.[58]

The most persistent and challenging criticism of the police came from the moderate republican and left-liberal press, which included newspapers like *Le Matin*, *Le Temps*, *Le Siècle*, *L'Aurore*, *La Lanterne* and *Le Radical*, mostly supportive of the pro-Dreyfus campaign in the late 1890s, and all with some later connections to the LDH.[59] They not only highlighted isolated cases of police malpractice, but used embarrassing evidence to promote wider agendas pushing for greater police accountability. Yet, their critical campaigns were firmly pro-republican, and their aim was to strengthen the republican regime. Considering that police malpractice and unaccountability were detrimental to the reputation and legitimacy of the republican regime, they sought to force republican ministers and parliamentarians to commit to higher standards of accountability and become more responsive to citizens' grievances. On the other hand, when it came to conflicts between police and Catholics demonstrating against the laws of separation of Church and State, or police intervening against anti-republican forces on the far-left or the far-right, the moderate republican and left-liberal media were firmly

---

[56] Note some discrepancies between our categorisation of attitudes towards police malpractice and the more general categorisation provided by Kalifa, Thérenty & Vaillan, "Le Quotidien" in eds. Kalifa et al. *civilisation du journal*, 292-3.

[57] AN, F7 12554, 'Rapports quotidiens de la Préfecture de Police, 1904-1913', Press statistic, June 1904.

[58] Dominique Kalifa, *L'Encre et le sang: Récits de crimes et société à la Belle Époque* (Paris, 1995); idem, "Crimes. Fait divers et cultures populaires à la fin du XIXe siècle", *Genèses*, 19, no.1 (1995) 68-82; See also Berlière, "professionalization: Revendication", 409.

[59] Christophe Charle, *Le Siècle de la Presse, 1830-1939* (Paris, 2004) 201-20.

supporting the ‘republican order’. With a joint circulation of 400,000-500,000 by 1904,[60] their campaigns were far more widely propagated than the more visceral criticism emanating from the socialist press, whose main newspapers, *La Petite République*, *L’Humanité*, *La Bataille syndicale* and numerous smaller publications, rarely exceeded 150,000.[61] Of similar circulation were the far-right publications, mainly *La Libre Parole*, *L’Intransigeant*, and *Action française*. Both the socialist press and the far-right press, focused on police malpractice for the purpose of castigating such incidents as a reflection of the rottenness and hypocrisy of the republican regime and its institutions.

The most unpredictable players on the question of police malpractice were the centre-right and conservative publications, such as *Le Figaro*, *L’Éclair*, *L’Echo de Paris* or the Catholic daily *La Croix*, who sometimes joined the outrage against the police. However, their engagement largely depended on whether the victim was middle-class, respectable and not associated with their political opponents. These publications tended to focus on the fact that police had misjudged a situation and arrested the wrong type of person, but they rarely voiced concern about extensive police powers and lack of accountability. While the centre-right and conservative newspapers were mostly sympathetic to police interventions against left-wing protesters, no matter how grotesquely violent, they did turn against policing measures during the demonstrations against the implementation of anti-Catholic legislation in the early 1880s and the laws on separation of Church and State, 1903-1905. The politicisation of the press coverage relating to police malpractice and the profound disunity over acceptable standards in policing often allowed ministers and politicians to weather the storm and ignore calls for reform and stricter control of the police.

---

[60] AN, F7 12554, ‘Rapports quotidiens de la Préfecture de Police, 1904-1913’.

[61] Vincent Robert, “Paysages politiques, cohérence médiatiques” in Kalifa et al. *Civilisation du journal,* 243.

Media outcry and press campaigns only marginally affected individual policemen or managers. As the republic stabilised, police managers were – somewhat paradoxically – increasingly in a position to ignore public consternation over police malpractice. In the 1870s Guyot's revelations of serious malpractice within the Paris police led to the resignation of Police Prefect Gigot. Yet his successor in the 1880s, Police Prefect Andrieux, publicly mocked the idea that police should become transparent and accountable to the public, to the law, or to the Paris municipal council.[62] While the press repeatedly drew public attention to problems of serious malpractice within the vice squad, the reaction from police managers was a bit of irritation, but mostly hostile indifference.[63] Louis Lépine, who held the post as Paris police prefect from 1893 to 1913, tended to ignore public outrage, and treated the press as well as elected bodies such as the Paris municipal council with contempt. After the turn of the century, Lépine appeared to believe himself untouchable, as his position only depended on the support of the interior minister, and successive interior ministers had come to believe that Lépine was the only guarantor of effective maintenance of public order in Paris.[64] Further down the police hierarchy police personnel only depended on the support by Lépine, and he was fiercely protective of his men when criticised by the press.[65] Rank-and-file policemen might face disciplinary action over misdeeds revealed by the press, but could be confident that no criminal sanctions would follow, no matter what was revealed by the press.

---

[62] Louis Andrieux, *Souvenirs d'un préfet de police* (Paris, 1885) 14-21; 54-61; 102-8; Guyot, *Police*, 330-7.

[63] Berlière, "Professionalization: Revendication", 409; idem, *Police des meours*.

[64] Berlière, *Lépine*, 63-76.

[65] See the career of the controversial station master Alexandre Kien, Anja Johansen, "Citizens' Complaints and Police (un)accountability: The Career of a Parisian Commissaire de Police of the Belle Époque", in *Law, Crime & Deviance since 1700*, eds. David Nash and Anne-Marie Kilday (London, 2016).

V. PUBLIC PROSECUTORS AND THE POLICE: COLLABORATION AND STANDARD PROCEDURES OF COMMUNICATION

The French Penal Code contained several articles establishing criminal responsibility for public officials. These included a range of offences, some of which related to public officials in general, such as misuse of power, corruption, perjury,[66] and some which applied specifically to police personnel, such as excessive violence and arbitrary arrest.[67] While the articles in the Penal Code were clear, the application of the law could be obstructed in numerous ways. Unfortunately, no comprehensive description seems to exist of the legal-procedural framework relevant for the prosecution of police personnel, so the historian has to piece together rules and statutes from odd corners of the legislation. These include both the rules and statutes that were relevant for initiating prosecution, but most importantly also many clauses which were employed to justify non-prosecution.

One major difficulty for complainants arose from the lack of clarity in defining the legal boundaries around policing. This eliminated the vast majority of allegations, as most extreme police acts could be classified as technically legal. The article 10 of the Code of Criminal Procedures accorded vast and vague powers to the police to enter into private spaces, search and remove anything of interest. An attempt in the late 1870s to remove or restrict this article

[66] Penal Code articles 177 & 180 (*corruption*); 184 (*abus d'autorité*).

[67] Penal Code articles 186 (*violence sans motif*); 184 (*violation de domicile*); 114 (*arrestation arbitraire*).

came to nothing due to opposition from Interior Minister Lepère and Police Prefect Andrieux.[68] Similarly, acts of violence, which were illegal under normal circumstances, became justifiable when committed during major public order operations because the policemen were acting under orders.[69] During public order operations the instructions issued to the police tended to be very vague, and thereby gave blanket sanctions to arrest and to use violence. As a result, it was extremely difficult to challenge such acts as illegal. The removal of criminal responsibility for policemen acting under orders was all the more serious because of the absence of any concept of proportionality in the use of force, except for very general instructions to act with "moderation".[70] As long as an act served a legitimate purpose (*motif légitime*) it would not be deemed illegal.[71] In addition, a 1817 ruling from the *Cour de cassation* established that "legitimate self-defence" could never be used as justification for obstructing or resisting a public official, irrespective of whether the action of the public official was disproportionate or illegal.[72] Protesters were by definition disrupting the public order. Even public gatherings or demonstrations which were authorised as legal could be broken up at any moment, as it was up to the police to determine whether and when a gathering became a threat to the public order.

---

[68] Andrieux, *Souvenirs*, 110-14; Jean-Marc Berlière "Une menace pour la liberté individuelle sous la République', *Histoire de la justice, des crimes et des peines*, 2008, online journal, https://journals.openedition.org/criminocorpus/262.

[69] Code Pénal article 114. See interpretation of this article under the entry "Attentats à la liberté des citoyens" in Félix Brayer, *Guide-Memento de Police Municipale* (Paris, 1879), 82-84.

[70] M. F. Mironneau, *Nouveau Manuel de Police judiciaire et administrative ou Guide pratique à l'usage des officiers de police judiciaries et agents de l'autorité et de la force publique* (Paris, 1877), 1-2; Jean Rault and Henri Phelipot, *Petit manuel de police à l'usage des gardiens de la paix de la ville de Paris* (Paris, 1902), 5-6.

[71] Brayer, *Guide-Memento*, 84, section "Violences illégitimes".

[72] Arrêt Boissin 1817. My thanks to Fabien Jobard for attracting my attention to this ruling. See also Aurélien Lignereux, *La France rébellionnaire: Les résistances à la gendarmerie (1800-1859)* (Rennes, 2008), footnote 76.

When police intervened it was with unrestricted force, and with no distinction made between protesters and random by-standers.

Another problem for potential complainants arose from the competing legal and administrative principles which made the legal responsibility of public servants, including the police, highly ambiguous. Some areas of policing – most notably the policing of prostitution – were defined as 'administrative acts' (*actes administratives*) rather than 'juridical acts' (*actes judiciaries*). While the legality of administrative decisions could be challenged in the administrative courts, illegal enforcement by the vice squad of an otherwise legal administrative decision fell into a void between the jurisdiction of the administrative courts and the ordinary courts.[73] This legal void was further cemented by the long-established principle that civil and criminal courts should not judge the actions of the executive, which included the police. This principle rested on article 75 of the Napoleonic Constitution of 1799, according to which civil or criminal prosecutions of public officials could only take place after a decision by the State Council (*Conseil d'État*). Although article 75 was abolished in 1871, in practice, civil and criminal courts continued to systematically declare themselves "incompetent" to judge members of the executive, well into the 20th century. As a result, some police actions – notably the operations by the vice squad – existed in a twilight zone where boundaries between legality and illegality were fluid to the point of making the letter of the Penal Code null and void.

A third problem derived from the implementation of the Penal Code by the judiciary. The question arises whether the low rates of prosecutions reflect the <u>unwillingness</u> of French prosecutors and judges to prosecute police personnel, or their <u>inability</u> to do so, due to police obstruction. Contemporary critics of the police, including the LDH, scorned the judiciary for

[73] Berlière, *Police des moeurs*, Chapter II.

being intimidated by the police and described the police as treating the judiciary with contempt.[74] Allegations against the police presented French prosecutors with an unenviable dilemma. They needed to uphold the law, but also depended on a good relationship with the police for investigation of all other cases, and could therefore ill afford serious conflicts with the police. Moreover, police controlled the physical evidence relating to conflictual encounters with the public, so police had considerable scope for "constructing" what happened during contentious events. While these patterns have been observed in many jurisdiction, past and present,[75] in France accused policemen were particularly sheltered from the full force of the investigative process. Firstly, the French procedures placed particular importance on obtaining a confession.[76] A policeman who sought to avoid making a confession had the advantage that he was unlikely to be subjected to the extreme techniques that police commonly used to extract confessions from ordinary suspects. Secondly, French prosecutors and judges tended to accord limited weight to independent witnesses, while treating police testimony as "evidence" rather than statements[77]. Accused policemen could also rely on the support from successive police

---

[74] "Cette timidité des magistrats ne résulte pas seulement de l'état actuel de la législation, mais encore de l'attitude scandaleuse de la préfecture de police, qui se considère comme absolument indépendante du parquet. 'Je me f** du procureur général' disait un jour un haut fonctionnaire de cette administration" *BOLDH*, 8-14, (July 15, 1908), 1309.

[75] Benjamin Hett, *Death in the Tiergarten: Murder and Criminal Justice in the Kaiser's Berlin* (Cambridge, MA, 2004) 23. Walker and Archbold make a similar point for twenty-first century US. Walker and Archbold, *New World of Police Accountability*, 48-51.

[76] Jean-Claude Farcy, *L'enquête judiciaire en Europe au XIX siècle: auteurs, imaginaires, pratiques* (Paris, 2007) 28-29.

[77] On the persistence of this practice see Fabian Jobard "Zur politischen Theorie der Polizei", *Neue Zeitschrift für Sozialforschung*, 31, no.1 (2013) 65-77.

prefects, from Andrieux to Lépine, who strongly objected to external scrutiny and any boundaries placed on their personnel.

The multiple reports and correspondence circulating between the public prosecutor (*procureur de la république*) and the police prefecture reveal that the relationship was characterised by collaboration rather than mutual hostility. Instead of challenging the police prefect over allegations of police illegality, prosecutors and investigating judges played an active role in keeping serious allegations against police personnel away from the courts. The Napoleonic Code of Criminal Instruction had removed decisions concerning prosecution away from the justices of peace (*juges de paix*), and made the public prosecutor the sole gatekeeper to the criminal justice system. He had the authority to determine whether a case should be examined as a felony (*crime*) by an investigating magistrate (*juge d'instruction*), whether it should be reclassified as a less serious offence (*délit*) or whether it should be abandoned.[78] Yet, despite occupying a powerful position within the criminal justice structures, French prosecutors, and the judiciary in general, were also fragile compared to their British and Prussian counterparts.[79] Although benefitting from the status of public officials (*fonctionnaires*), French prosecutors and judges experienced significant decline in their status and independence during the 1880s.[80] Most members of the judiciary were no longer notables, but depended on their legal career as main income, and the politicisation of appointments and promotions made them vulnerable to changes in the political power constellations. Throughout the 19th century there had been several rounds of mass-sacking (*épurations*) among the higher

---

[78] René Lévy, "Police and the judiciary in France since the nineteenth century: The Decline of the Examining Magistrate", *British Journal of Criminology*, 33-2 (spring 1993) 167-186; Farcy, *L'enquête judiciaire*, 28-29.

[79] For a comparison see Johansen, "Policemen in the Dock".

[80] Jean-Claude Farcy, *Histoire de la justice en France de 1789 à nos jours* (Paris, 2015) 43-50; Benoît Garnot, *Histoire de la justice: France XVIe-XXe Siècle* (Paris, 2009) 263-264.

echelons of the judiciary, with the most recent wave in 1879-1883 still fresh in mind by the turn of the century.[81] Moreover, the independence of the judiciary and their security of tenure were also challenged as republicans in government suspected the judiciary of harbouring anti-republican sentiments and clerical sympathies.[82] Individual prosecutors therefore had good reasons to fear getting on the wrong side of influential people and to avoid conflicts with powerful sections of the establishment. Unlike Prussia, where there were strong precedents throughout the 19th century for criminally prosecuting public servants, often with the Prussian state as plaintiff,[83] for a French prosecutor to open a case against members of the police not only carried the risk of a confrontation with the powerful Paris police prefect, it would also breach the long-established practice of not prosecuting anyone acting on behalf of the French state. This alone would have brought any prosecutor many enemies within the republican establishment.

French prosecutors had several avenues within the legal-procedural structures to remove themselves from the uncomfortable task of prosecuting members of the police.[84] According to the Napoleonic Code on Criminal Procedure,[85] once a public prosecutor had

---

[81] Jean-Pierre Royer, "Le ministère public, enjeu politique au XIXe siècle" in *Histoire du parquet*, ed. Jean-Marie Carbasse (Paris, 2000), 259; Jean-Pierre Royer, Nicolas Derasse, Jean-Pierre Allinne, Bernard Durand, and Jean-Paul Jean, *Histoire de la justice en France du XVIII siècle à nos jours* (4th ed.), (Paris, 2010), 665-671 & 697-703; Jean-Pierre Machelon, "L'épuration républicaine: la loi du 30 août 1883", *Histoire de la Justice*, 6 (1993), 87-101.

[82] Royer et al. *Histoire de la justice en France,* 685-91.

[83] The Prussian State Archive, Berlin-Dahlem, HA1, Rep.84a, No,2684: 'Die gerichtliche Verfolgung der Beamten wegen Überschreitungen ihrer Amtsbefugnisse, Art. 97. der Verfassungsurkunde vom 31 Januar 1850'; Johansen, "Policemen in the Dock".

[84] Machelon, *République contre les libertés*, 161-2.

[85] Code d'instruction criminelle of 1808, articles 9, 22, 27, 29, 30, 45, 50, 51, 57, 63 & 64.

decided that a case should be investigated, it would be transferred to an investigating magistrate who would lead the criminal investigation undertaken by the detective branch (*police judiciaire*). This is how the system was supposed to operate, and this was how complainants – including the otherwise well-informed LDH – clearly believed it worked when they sent their allegations against the police to the public prosecutor.[86] However, documents from the police prefecture show that all allegations against police personnel that were sent to the public prosecutor were systematically forwarded to the police prefecture within three or four days.[87] The police prefect then transferred the case to the internal disciplinary body, *le contrôle general*, as standard practice. By this transaction the criminal allegation was conveniently redefined as a disciplinary issue. Although the police prefect did enjoy the authority to receive criminal complaints and open investigations,[88] this did not include the discretion to reduce a criminal allegation to a disciplinary matter.

The transfer of criminal allegations from the public prosecutor to the *contrôle général* had important implications for the complainant. Little is known about the internal disciplinary investigations themselves, as only the final reports have been kept. However, it is clear that there were few formal rules around internal disciplinary investigations and they accorded no rights to the complainant. She or he might be called to make a statement, but often was not. The *contrôle général* was not a complaints body or a juridical investigatory body; its only concern was breaches of the disciplinary code. However, the core subject of citizens'

---

[86] APP, BA 1554, *Plaintes contre les commissaires 1896-1906*; APP, BA 899, *Plaintes contre les Commissaires de police et le personnel des commissariats 1907-1911*: Case Benech of 1905 and Case Le Plard of 1908. See also detailed descriptions of the LDH campaigns in the *BOLHD 1901-1914.*

[87] APP, BA 1554, *Plaintes contre les commissaires 1896-1906*; APP, BA 899, *Plaintes contre les Commissaires de police et le personnel des commissariats 1907-1911*.

[88] Art.10 of the Code d'Instruction Criminelle. For details see Berlière "L'Institution policière", 373-87.

complaints often did not concern acts that violated the disciplinary code, as discipline only related to acts which police managers saw as harmful to the good functioning of their organisation. Quite apart from the rather capricious and inconsistent enforcement of discipline,[89] the disciplinary code was utterly unsuited to addressing concerns from members of the public about the way law enforcement affected their personal dignity and bodily integrity as well as their rights as citizens.

Seen from the perspective of the complainant, investigations by the *contrôle général* constituted a black box without any transparency or obligations in relation to the complainant. It was entirely up to the police what information they released to complainants about the handling and the outcome of their case. Sometimes a copy of the report from the *contrôle général* was sent to the public prosecutor, but he was under no obligation to inform the complainant as this was not a juridical investigation. Furthermore, the complainant would never know whether investigations by the *contrôle général* led to any disciplinary action.[90] In rare instances, the complainant got some financial compensation, but the case was kept out of court, no matter how criminal according to the law.

VI. SEEKING NOT TO FIND: THE DEATH OF YOUNG NUGER IN 1893

As investigations against police personnel were few, general patterns are difficult to draw. Nevertheless, all documented cases point towards the judiciary playing an active role in

[89] Johansen, “Citizens’ Complaints”, 181-6.

[90] APP, BA 899, *Plaintes contre les commissaires de police et le personnel des commissariats 1907-1911*: Complaint by Mlle. Bosquet against Police Commissioner Niclausse, April 1910.

preventing allegations against police personnel from entering the criminal justice process. The only known case from Paris – apart from the Forissier case of 1903 – which got as far as being examined by an investigating magistrate sheds interesting light on the role of the judiciary.

On July 1, 1893 a young man named Nuger was killed during a police intervention against rioting students when a group of demonstrators sought refuge in a café at the corner of Boulevard St. Michel and Place de la Sorbonne. During the hurly-burly of the police operation, one policeman was seen by several witnesses hurling a heavy porcelain match-holder with full force into the crowded café. The match-holder landed with considerable force on the head of the unfortunate Nuger, a customer with no connection to the riot, who was simply enjoying a quiet coffee with some friends. He died of his injuries during the night without having regained consciousness. According to the press reports this was the first death during riot policing in Paris since the Commune of 1871.[91] The rarity of fatalities naturally heightened the pressure on the public prosecutor to investigate.

What actually happened and who was ultimately responsible for Nuger's death is not the concern here. The key issues are rather the strange choices and priorities of the public prosecutor and the investigating magistrate. At least two anomalies in the investigation suggest that they were actively trying to avoid identifying the match-holder throwing police officer.[92] In the first place, a significant number of the policemen, who were present at Place de la Sorbonne, were absent when witnesses were invited to identify the policeman who had thrown the match-holder. A list provided by the police to the investigating magistrate on July 7 clearly stated that policemen from three units had been present: forty-six policemen from the 5th

[91] *Le Matin*, July 3, 1893 "Un cadavre: Épiloque funèbre d'une manifestation ridicule".

[92] ADP, D3U6, box 46: "Emeutes du Quartier Latin, mort du Sieur Nuger, tué accidentalement par un pot d'allumettes lancé par une main inconnue".

arrondissement, forty from the 1st central brigade and sixteen from the 2nd central brigade.[93] Yet, the press reports only mention police from the 5th arrondissement and the 1st central brigade, and the first parading of police personnel before witnesses only included policemen from these two units. This matters because, while several witnesses claimed that the policeman who launched the match-holder carried number 105, one witness noted that it was number 105 from the 2nd central brigade.[94] The investigating magistrate was in possession of all this information; yet when a second parade before witnesses was organised on July 11 only four out of sixteen policemen from the 2nd brigade participated, and the policeman with number 105 was not among them. The witness who had claimed that the thrower came from the 2nd brigade was subsequently vilified by the investigating magistrate as an attention-seeking fantasist and subjected to vicious character assassination by the investigators.[95]

From July 4 onwards, the investigating magistrate increasingly focused his attention on a young policeman, Claude Révardeau, who had resigned from the police of the 5th arrondissement immediately after the events. From July 19, he was the only person under investigation. Révardeau explained that he had resigned from the force for personal reasons. As a local boy of the 5th arrondissement, he felt unable to act as a policeman in the local community after all his friends and neighbours had seen him involved in this heavy-handed police intervention. He also stated that at the time he handed over his resignation papers he was unaware that someone had been killed. After his resignation, Révardeau was a convenient target for investigation as he was no longer a member of the police. By coincidence he had also carried the number 155, which was sufficiently close to 105 to justify placing him under

[93] ADP, D3U6, box 46: Note from the Police Prefect to the investigating magistrate Meyer, July 7, 1893.

[94] ADP, D3U6, box 46, documents 59-60.

[95] ADP, D3U6, box 46. The records relating to this case contain multiple documents aimed at undermining the credibility of this particular witness.

suspicion. However, according to his own statement, supported by police documents, he had been nowhere near the Place de la Sorbonne on that day, so it should have been fairly easy to establish his innocence. Nevertheless, the investigating magistrate continued to focus on Révardeau for the following eighteen months, before concluding in December 1894 that it had been impossible to establish enough evidence to prosecute him – a so-called *non lieu*. This was hardly surprising, since there was never a shred of evidence that Révardeau had anything to do with Nuger's death. By December 1894 public attention had long moved on, and few newspapers mentioned this outcome, even among the left-leaning and socialist newspapers that had reported extensively on the case in the summer of 1893.[96] Reading through the files, it is hard to avoid drawing the conclusion that the public prosecutor and the investigating magistrate did their very best to avoid identifying the actual "thrower". The obvious omissions in the investigation process, particularly in the parading of police before witnesses, and the inexplicable focus on Révardeau, indicate that both were keen to prevent the case getting to court.

VII. THE DEATH OF THE WORKER ZIRN IN POLICE CUSTODY: A CASE OF INSTITUTIONAL COVER-UP?

While the death of Nuger was very public and initially generated a lot of press attention, the death of the worker Zirn in police custody in September 1912 reflects all the problems arising

[96] *Le Radical*, *La Lanterne*, *Le Temps*, *le XIXe Siècle*, *Le Salut public*, as well as a range of local newspapers from Nuger's home town of Clermont-Ferrand. There were also a few mentionings in 1893 from the popular press *Le Journal* and *Le Petit Parisien*.

from lack of independent eyewitnesses, disregard for non-police witnesses, complete police control of evidence – and as this case testifies – obvious involvement of the judiciary in covering up deaths in police custody. Whether this case was highly unusual or merely the tip of an iceberg is impossible to verify. Throughout the late 19th and early 20th centuries the French press was teeming with allegations about individuals who had died in police custody due to police violence rather than to accidents or suicide, as officially claimed. Even the police slang for beating up people in custody, "*passage à tabac*", was familiar to the general public. Yet, police did not keep a register of deaths in custody, and documentation from the authorities is almost non-existent, except for this case, which generated considerable paperwork and internal police communications.[97] Zirn's death thereby provides rare insights into the procedures followed by the police when people died in custody. The documents reveal a well-oiled machinery for covering-up any such deaths, involving not only the police, but also the judiciary (*le parquet*), whose authorisation was required for getting the dead body six feet under, quickly, and without the family being allowed to see it.

The death of Zirn only became an issue for the police because details about the state of his body were leaked to the press and created embarrassment for the police. It also mobilised Clemenceau as Interior Minister to demand an explanation from Police Prefect Lépine, as Clemenceau had personally sought to bring an end to random beatings of arrestees with a *circulaire* that was posted in all police stations.[98] It is revealing that when Police Prefect Lépine

[97] All police documents relating to this case are kept in the personnel file of Station Master Rouget. APP, KA 80, *Dossier du personnel – Rouget No 77907.*

[98] The text of so-called *Circulaire Clemenceau* of June 7 1906 was published in full in the *BOLDH*, 6-17 (Sept. 1906), 1504-1505.

requested an explanation from the local station master, his concern was not why Zirn had died in police custody, but how an outsider got access to the dead body.[99]

The details of the case are very similar to many others reported in the socialist press and in publications critical of the police like *La Lanterne* or the *Bulletin Officiel* of the LDH. One Friday night September 13, 1912, two workers were on a jolly night out in Saint-Ouen, one of the outer suburbs of Paris. They were arrested for being drunk and disorderly and spent the night in police custody. By dawn, Saturday September 14, one of them – with the unusual name Privat Zirn[100] – was dead. The police explained that he had committed suicide by hanging himself from the window in his cell. Within hours, the local police doctor, Thobois, examined the body and signed the papers certifying that Zirn had committed suicide by hanging. The same day, the judicial authorities (*le parquet*) authorised the police to bury the body, and the date for the burial was set for the following Monday, September 16, at 10 am.[101] The speedy arrangements between the police and the *parquet* of bureaucratic formalities – death certificate and authorisation for burial – gives the strong impression that this was not an isolated case, and that bureaucratic procedures were well in place to deal with such incidents. The *parquet* also showed a remarkable lack of curiosity about the details of Zirn's death. It issued the death certificate stating that he had committed suicide based exclusively on the information provided by the local police at St. Ouen. The doctor who signed the death certificate two days later was the police medic from the Paris Police Prefecture and the family was not allowed to see the

---

[99] APP, KA 80, *Dossier du personnel – Rouget No 77907*: Typed report by Rouget, Commissaire de Police, St. Ouen, to the general secretary for police personnel, 24 September 1912.

[100] The name is wrongly spelled in many press reports as 'Zury' or 'Zyrm'. Similarly, his first name is sometimes mistaken for a title.

[101] APP, KA 80, *Dossier du personnel – Rouget No 77907*: Typed report by Commissaire Rouget, Station Master at St. Ouen, to the General Secretary for police personnel, September 24, 1912.

body or to have it independently examined. Moreover, it remains unexplained why the police should arrange, and pay for, the burial of someone committing suicide in custody. The family protested that suicide was not in line with Zirn's character and his mate, Odin (or Audin), who had been locked up in a separate cell, later declared that there had been no indication when they parted that Zirn was about to commit suicide.[102]

Events took an unexpected turn on Sunday evening September 15 when a gentleman, presenting himself as Doctor Meslier, appeared at the police station, asking to see the station master. The police secretary on duty was expecting a police doctor named Millet from the Police Prefecture who was supposed to sign the death certificate, thereby officially stating that Zirn had died by suicide. As the two names "Mesliers" and "Millet" sound rather similar in French, the police secretary committed the error of allowing Doctor Meslier to inspect the body.[103] As it turned out, Doctor Meslier was not from the Police Prefecture. He was a local socialist politician, senator and deputy mayor (*adjoint au maire*) of Saint-Ouen, who just happened also to be a medical doctor by profession. As Meslier was unexpectedly given access to Zirn's body, he applied his professional skills and later revealed his observations to the press. He found that one of Zirn's arms was broken in three places, there were multiple severe bruises (*ecchymoses*) to the face, torso, arms and legs some of which seemed to be caused by boot heels. The torso was violet, with coagulated blood covering one elbow; both hands were described as severely swollen and bruised, with similar injuries to the legs. Meslier also observed traces around Zirn's neck from the rolled-up shirt by which the body was found hanged. In a later statements to the investigating magistrate, Meslier declared that it was unlikely that a man in such a physical state – with a broken arm, severely swollen hands and

---

[102] Odin's statement to the investigating magistrate Tortat was published in *L'Humanité*, October 17, 1912.

[103] APP, KA 80, *Dossier du personnel – Rouget No 77907*: Typed report by Commissaire Rouget, Station Master at St. Ouen, to the General Secretary for police personnel, September 24, 1912.

furthermore described by both police and his mate Odin as extremely drunk – would have been able to undress himself, bind his shirt into a noose, tie it to a window two metres up the wall and hang himself, all within the space of five minutes, as the police claimed.[104]

Meslier's first action was to use his position as deputy mayor to stop the funeral from going ahead on Monday morning at 10 am.[105] Instead, Zirn's widow made a complaint to the public prosecutor for unlawful homicide by "unknown". By this time, the up-coming socialist lawyer Pierre Laval had appeared at the scene, acting on behalf of the Zirn family. Instead of being buried, the body was transferred to the morgue, awaiting the official autopsy ordered by the public prosecutor. Only on the following Friday September 21, eight days after Zirn's death, did the young star pathologist Charles Paul conduct the official autopsy on behalf of the public prosecutor. He concluded that the body was in such a state of decay (*putréfaction extrêmement développée*) that it was impossible to identify bruises or concussions, but "nothing excludes the possibility that he had died from hanging".[106] The report says nothing about Meslier's allegations of broken bones.

It took another six days before an investigating magistrate, Tortat, was assigned responsibility for the case. With the official autopsy being inconclusive and Dr. Meslier

---

[104] This was Meslier's testimony to the investigating magistrate October 9, 1912. The original documents from the investigation are not available, but these were the details reported in the press irrespective of political affiliations. Meslier repeated his statement during a public meeting on October 19, 1912, which was quoted verbatim in several far-left newspapers, including *L'Humanité* and *La Bataille syndicalite*.

[105] APP, KA 80, *Dossier du personnel – Rouget No 77907*: Internal Police Report, October 20, 1912 "Meeting organisé par la Jeuness Syndicaliste de St. Ouen et la section de St. Ouen du Parti Socialiste Unifié pour protester contre l'assassinat du charbonnier Zirn par la police"; see also *L'Humanité*, October 20, 1912: "L'Affaire Zirn: Un meeting à Saint-Ouen".

[106] APP, KA 80, *Dossier du personnel – Rouget No 77907*: Note from the general secretary of the Police Prefecture: "Renseignements reçus de la Morgue", September 23, 1912.

challenging the conclusions of the forensic pathologist on several points, the investigating magistrate came to the conclusion on December 9, 1912 that it was not possible to determine whether Zirn had died of a severe beating before he was hanged – as Dr. Meslier claimed – or whether he had committed suicide. The investigating magistrate therefore closed the case. Madame Zirn sought to challenge this before the prosecuting authorities (*la chambre des mises en accusation*), but nothing came of it.[107]

The Zirn case shows the crucial role that the judiciary could play in preventing the proper investigation of a case. From the moment of the discovery of the body in the early hours of Saturday September 14, a well-oiled bureaucratic machinery was set in motion, with the *parquet* authorising a speedy burial without involvement of the family or independent observers. From the outset the judicial authorities accepted the police explanation of suicide without further questions. After Meslier had raised legitimate questions about the cause of death, the investigating magistrate missed multiple opportunities for proper investigation; neither the forensic pathologist acting for the public prosecutor nor the investigating magistrate showed any sign of urgency, but left the body to decompose to the extent that no cause of death could be established. As with the Nuger case two decades earlier, the prosecution authorities showed little interest in seriously investigating or challenging the explanations provided by the police. Whether by design or by incompetence, this allowed the investigating magistrate to conclude that there was no evidence that Zirn's death was caused by violent beating, rather than by suicide. Finally, the investigating magistrate paid no attention to Docteur Meliers's testimony concerning the serious injuries Zirn had suffered. Similar disregard by the

[107] *L'Humanité*, December 10, 1912, "l'Affaire Zirn – Le juge rend un non-lieu – La veuve fait opposition".

prosecution authorities was also apparent in the dismissal of medical examination of the injuries suffered by Forissier in 1903.[108]

Within a few days, Zirn's death became highly politicised. The case was promoted by socialist organisations and politicians, with Pierre Laval using it as a platform for his political ambitions; the demonstrations in support of the Zirn family were organised by socialist organisations; and the case was extensively reported in far-left newspapers such as *La Bataille Syndicaliste*, *Le Radical* and Jean Jaurès' *L'Humanité*. In contrast, it generated remarkably little attention in the moderate republican press. *Le Temps* and *Le Siècle* largely ignored this case, despite their long-standing concerns for transparency around allegations of police malpractice. *La Lanterne* published a few small notices in September that "an alcoholic" had died in police detention, and repeatedly misspelled Zirn's name in a variety of ways.[109] The unwillingness to engage with this incident can hardly be explained by the case itself. Only the political appropriation of Zirn's death by socialists can explain the lack of interest in this case by the moderate republican press. For these fiercely anti-socialist publications, the fact that this case also played to the advantage of socialist political agendas seemed to override their long-standing concerns for keeping police to account and challenging government to uphold certain standards of transparency and accountability.

[108] Similar practices and priorities still characterise French criminal justice processes. See Cédric Moreau de Bellaing, "Violences illégitimes et publicité de l'action policière", *Politix* 3-87 (2009) 119-41; Geraldine Bugnon, "Le constat medical peut-il mettre à l'épreuve les frontiers de la force policière légitime? Enquête sur un dispositif médico-légal de dépistage des violences policières", *Déviance et société*, 1-35 (2011) 113-36; see also Jobard "Zur politischen Theorie der Polizei", footnote 1.

[109] *La Lanterne*, September 15-28, 1912.

VIII. THE CASE THAT WAS: THE FORISSIER AFFAIRE OF 1903

In constrast to the Nuger and Zirn cases, the unusual circumstances that enabled the Forissier case to reach the court are revealing for the obstacles that generally prevented allegations against police personnel from getting to trial. On May 7, 1903 Sous-Brigardier Yon and Police Constable Goblet from the notorious Parisian vice squad, sought to arrest two respectable young ladies, for unregulated prostitution. Louise Forissier and her prospective sister in law, Madeleine Maugard,[110] were only a few metres from the front door of their home when they were accosted by the two police officers. Antoine Forissier, brother and fiancé of the two young ladies, had just left them but returned when he heard their screams for help. Forissier, unaware that the two men were plain-clothes police officers, started a fight which led to his arrest and a solid beating both in the street and later at the police station, before his employer and influential family friends managed to secure his release late in the night. The details of this incident are typical of numerous descriptions of conflictual encounters between members of the public and plain-clothes officers from the vice squad. People who were arrested by any police unit consistently complained about being beaten while in custody – all to no avail. However, in a unique turn of events, the two policemen who arrested Antoine Forissier became subjected to criminal prosecution and conviction.

Officers from the vice squad were particularly difficult to hold to account to the law because they operated on the basis of administrative decrees, rather than statute law. Women who were wrongly accused of engaging in unregulated street prostitution – as was the case with Louise Forissier and Madeleine Maugard – therefore found themselves in a limbo, where legal

[110] Madelaine Maugard was married only a few weeks after the event, whereby she became Mme. Forissier. In the following, reference will be made simply to “the Forissiers”.

guarantees of civil liberties and the provisions in the Penal Code on police accountability simply did not apply. French rights activists had vigorously challenged this principle since the 1870s, yet by 1903 this was still to no avail.

It was probably due to the personal connections of the Forissiers that their complaint was not stopped in its tracks. The two hapless police officers had unknowingly attacked people who were in an exceptionally strong position to fight back. Antoine Forissier was a journalist, specialised in reporting court cases for *La Lanterne*, so the first newspaper accounts of the case were penned by Forissier himself. The case soon generated a media storm that included not only the press that was traditionally critical of the police, but was also joined by the centre-right and conservative press. On May 9, two days after the event, criminal allegations were presented to the public prosecutor on behalf of the Forissiers by their lawyer René Renoult, who was also member of the National Assembly, a leading member of the Radical Party and the LDH, as well as a barrister at the appeal court of Paris (*avocat de la cour d'appel de Paris*).[111] The policemen were accused of "arbitrary arrest" (art.114), "damages" (art. 117) and "deliberate acts of violence" (art. 311).[112] In a completely unprecedented move, the Forissiers also sued Police Prefect Lépine for civil responsibility for acts committed by his personnel.

At that point Lépine himself suddenly changed his approach, which was quite out of character. In the morning of May 8, Lépine's position was the usual staunch defence of his men, yet by the evening both Yon and Goblet were dismissed from office and a disciplinary inquiry had been opened by the *contrôle général*.[113] A few days later Lépine made an uncharacteristically humble admission to the Paris municipal council that the initial explanations made by the two policemen for arresting the two young ladies, as well as most of

---

[111] *BOLDH*, 3-5 (March 1903), 559-561.

[112] ADP, D.2U6, box 137, Letter from Forissier to the Public Prosecutor, May 9, 1903.

[113] *La Lanterne*, May 8 1903; *BOLDH*, 3-5 (March 1903), 559-561.

their claims against Antoine Forissier, were entirely untrue.[114] The documents do not reveal what caused Lépine to change approach, but an article in *La Lanterne* claimed that the Forissier Affair affected Lépine's ambitions to be elected senator in the Loire region. No evidence has been found to support this claim, but, if indeed Lépine had ambitions to become a senator, he could not ignore that the three Forissiers happened to be the son, the daughter and the daughter-in-law of the chief editor of one of the leading republican newspapers in the Loire region, whose political support Lépine would need for any attempt to be elected.[115]

The case reveals a number of deviations from standard procedures in how criminal allegations against police personnel were normally handled. The most obvious was the public disclosure of the report by the *contrôle général*. The internal disciplinary investigation started on May 8, before the Forissiers made a criminal complaint on May 9. The *contrôle général* was unusually quick to investigate the case, and because of the criminal complaint by the Forissiers, the *contrôle général* handed over their report and record of interviews to the public prosecutor already by May 11. Reports from the *contrôle général* were normally only for internal use, but because the case had now turned into a criminal investigation, it was shown to the lawyer acting for the Forissiers, whereby the content was disclosed to the public.

Usually it was the reports from the *contrôle général* that established the "truth" about all complaints against the police. The narratives were clearly police-led and mainly served the purpose of providing the police prefect and the public prosecutor with a justification for

---

[114] *Le Figaro*, May 12, 1903, "À l'Hôtel de ville": "J'ai le chargrin de devoir dire au Conseil et j'éprouve une humiliation à lui avouer que la version des deux agents était mensongère. Ces agents sont révoqués, malgré leurs bons antécédents". See also Berlière, *Police des moeurs*, 4-5.

[115] *La Lanterne*, May 10, 1903, front page article "A Monsieur le préfet de police".

dismissing criminal allegations as groundless.[116] It is therefore revealing that the report from the *contrôle général* into the Forissier case could not survive public scrutiny. It was derided in the press and, during the court hearings in July and August, the evidence presented in the report was comprehensively exposed as entirely unbelievable and obviously fabricated.[117] The key witnesses for the defence of Yon and Goblet were two registered prostitutes whose statements were incoherent and illogical. Moreover, multiple independent witnesses testified that the two prostitutes, contrary to their testimony, had not been present at the scene. This was later confirmed by one of these women who admitted that she was forced by Yon and Goblet to act as witness and to lie under oath in support of their version of events.

The publicity surrounding the case, and the repeated revelation of police-fabricated evidence and perjury, made it difficult for the public prosecutor not to let the case go to trial. The public prosecutor recommended that Yon and Goblet be tried before the lower criminal court (*tribunal correctionnel*),[118] rather than before the higher court, the *cour d'assises*, which dealt with more serious crimes. He also recommended that the two policemen should not be prosecuted for "arbitrary arrest" on the grounds that this charge could only come into effect if the policemen could be shown to be deliberately malevolent in regard to the arrestee. According to the prosecutor Yon and Goblet had acted "in good faith", and given that the more senior of the two had been strongly under the influence of alcohol, their actions were to be treated as an "error" rather than the criminal act of "arbitrary arrest". On July 11, the court made two rulings

---

[116] See collections of reports in APP, BA 1554, *Plaintes contre les commissaires 1896-1906*; APP, BA 899, *Plaintes contre les Commissaires de police et le personnel des commissariats 1907-1911.*

[117] ADP, D1U6, box 831: 'Correctionnelle, Tribunal de 1ere Instance, 9eme Chambre', 3 August 1903.

[118] ADP, D.2U6, box 137: "Requisitoire définitif du Procureur de la République", June 19, 1903. Serious crime which could lead to more than five years of prison were tried at the *cour d'assises*, whereas the *tribunnal correctionnel* dealt with less serious crimes (*délits*).

relating to the "competence" of the court and the exact charges to be brought against the two police officers. The judge rejected the defence's claim that the court was "incompetent" to rule on administrative matters; both police officers were therefore to be charged with arbitrary arrest (art. 114) and damages (art. 117). However, in the civil case against Police Prefect Lépine the court declared itself "incompetent to interfere in administrative matters".[119] The final verdict of August 3, 1903 found Yon and Goblet guilty of violence and awarded damages; it gave both officers a one-year suspended prison sentence and ordered them to pay each of the young girls a sum of 100 francs in damages. The court also confirmed that no civil case could be made against Police Prefect Lépine, and reiterated that he could not be held responsible for acts committed by his personnel.[120]

The Forissier case became a landmark in several respects. The immediate political consequence was that Interior Minister Combes established an extra-parliamentary commission to investigate the vice squad.[121] The attempt to sue Police Prefect Lépine also constituted the first of several attempts by the LDH to hold senior police managers civilly responsible for acts committed by their personnel. That the civil case against Lépine was rejected on technical grounds is hardly surprising. As one anonymous commentator stated, this complaint should rightly have been brought before the *Conseil d'État* as the highest administrative court.[122] So why did the Forissiers' lawyer René Renoult seek civil suit instead? As an experienced lawyer and barrister at the appeal court of Paris, he was hardly unaware that Lépine could not be held legally responsible in a civil suit. It seems that the LDH was simply pushing for one successful court ruling that would create a precedent and force a change in the

---

[119] ADP, D.2U6, box 137: '9ème chambre correctionnelle', July 11, 1903.

[120] ADP, D.2U6, box 137: '9ème chambre correctionnelle', August 3, 1903.

[121] *Le Figaro*, 29 May 1903, "La Chambre: Questions et interpellations".

[122] *Le Temps*, August 7, 1903: "A propos de l'Affaire Forissier".

long-established separation of administrative jurisdiction from civil and criminal jurisdiction. Moreover, in the publications of the LDH, frequent references are made to the need for introducing constitutional guarantees against arbitrary arrest along the lines of the English Habeas Corpus. In a speech to the British Personal Rights Association in 1903, Yves Guyot described the case against Yon and Goblet as just one more proof that in France public officials were beyond accountability to the law.[123] Interestingly, the same criticism was made by Albert Gigot,[124] the Police Prefect of Paris who had resigned in 1879 in response to Guyot's allegations of serious malpractice within the Paris police force.

In another highly publicised case of 1904, the LDH helped Antoinette Favre from Lyon to launch a civil suit against three policemen from the vice squad. As in the Forissier case, the LDH made sure that Favre got first class legal assistance through Jean Appleton, a founding member of LDH, law professor at the University of Lyon and barrister at the appeal court in Lyon. The case first went through the *tribunal civil* and then through the *Cour de Lyon*, both of which declared that the acts of policemen from the vice squad were administrative acts that could not be challenged in civil or criminal courts. However, an unprecedented ruling from the Lyon appeal court finally established, for the first time, that when a woman was arrested by the vice squad, this constituted a <u>juridical</u>, rather than simply an <u>administrative</u> act.[125] Accordingly, Antoinette Favre was allowed to bring civil suit against the three members of the vice squad, and won compensation for damages. This, however, did not mean that the policemen responsible for her arrest were liable to criminal prosecution.

---

[123] *The Individualist* (Official publication of the Personal Rights Association), 244 (July 1903), 43.

[124] Albert Gigot, "Des garanties de la liberté individuelle", *Revue pénitentiaire*, 27 (July-Oct. 1903), 1082.

[125] *BOLDH*, 4-3 (Feb.1904), 283-284; Mathias Morhardt, *L'Oeuvre de la Ligue des droits de l'homme, 1898-1910* (Paris, 1911), 161-2.

Complainants continued to face an uphill struggle in bringing criminal or civil prosecution. In 1908 a young girl, Valérie Le Plard, again with the assistance of the LDH, launched criminal as well as civil charges against two police officers from the Parisian vice squad for illegal arrest on false charges of unregulated prostitution.[126] In an act of public shaming to demonstrate the absurdity of the legal arguments used by the public prosecutor in rejecting the case, the LDH published the full text of his recommendation to the prosecution authorities (*la chambre des mises en accusation*) as well as the correspondence between them and Le Plard's lawyer. The correspondence revealed that the public prosecutor's rejection of Le Plard's complaint rested entirely on statements by policemen from the vice squad who all claimed to have seen Le Plard soliciting in various places. The public prosecutor thereby chose to ignore the testimony of independent witnesses who provided Le Plard with an alibi at least for the majority of dates when the police claimed she had been seen soliciting. Nevertheless, the *chambre des mises en d'accusation* followed the recommendation from the public prosecutor and rejected the case against the police officers, while charging Le Plard with the legal costs. However, the LDH was pushing the boundaries, and the Le Plard case got much closer to the courtroom than any previous case, except for that of the Forissiers.

Le Plard did not get her day in court. Yet the police and the judiciary were unable to prevent the documents from being published by the LDH, much to the embarrassment of both institutions. Le Plard became the poster-girl for civil liberties campaigns against the Paris police in general, and the vice squad in particular. So despite failure to get more cases to court, the involvement of the LDH became a game-changer for an increasing number of complaints against police personnel and *gendarmes* from across the French territory. It placed police managers, prosecutors and successive interior ministers on the defensive, forced them to

[126] The case was described in detail with supporting documents in *BOLDH*, 8-4 (Feb. 1908), 438-446.

release documents that were not normally made available to complainants, and repeatedly challenged the public prosecutor to justify his decisions.

IX. NON-PROSECUTION OF POLICE PERSONNEL AND ITS IMPACTS ON POLICE LEGITIMACY

The non-prosecution of police personnel in highly publicised cases of serious misconduct and illegality inevitably undermined the attempts by Police Prefect Lépine to improve the image and the legitimacy of the Paris police.[127] In order to understand why the practice of non-prosecution persisted, despite its detrimental impact on police legitimacy and public trust, it is worth comparing the ideological construction of police legitimacy in the French Third Republic with the function of police accountability in legitimising policing in Victorian/Edwardian Britain and Wilhelmine Prussia. In France, police accountability was never explicitly formulated and integrated into the official rhetoric as it was in Britain through the Peelite principles. French police legitimacy in relation to the citizenry rested on the commitment to defend citizens' safety and protect their possessions against crime and disorder committed by other citizens. These principles mostly dated from the revolutionary era, and were carried over to later regimes.[128] In relation to the Third Republic, contemporary politicians and later historians have agreed that police legitimacy consisted in the loyal defence of the regime, and in the effective enforcement of orders issued by democratically elected ministers and mayors,

[127] Lépine, *Souvenirs*, 195; Berlière, *Lépine*, 152-8; Berlière & Lévy, *Histoire des polices*, 494-6.

[128] Most clearly expressed in article 16 of the *Code des délits et des peines*, 3 brumaire, year IV (25 Oct. 1795). See Berlière & Lévy, *Histoire des polices*, 16-19.

as well as their officials.[129] In Paris, individual policemen were accountable to the disciplinary code, to their superiors, and ultimately to the police prefect who was, in turn, accountable to the interior minister.[130] No mention was made in the official police rhetoric of individual policemen being accountable to the law or to the public.

Accordingly, neither Lépine nor the judiciary nor successive interior ministers attempted to project the impression that courts played a role in sanctioning illegalities committed by the police. Victims of serious police malpractice could only hope that the transgressing policeman would be disciplined by his superior. Yet, the report from the *contrôle general* that was made public during the trial of Yon and Goblet in the Forissier Affair of 1903, rather than showing the good functioning of the internal disciplinary procedures, amply demonstrated contempt for the victims of police violence and malpractice. This did nothing to improve public confidence in the willingness of the Paris police to handle malpractice internally. In the eyes of the public, the lack of transparency and the suspicion that the judiciary colluded with the police in keeping erring officers away from the dock were arguably more damaging than the illegal acts in themselves.[131]

This was very different from Britain, where police legitimacy was based on the idea that police personnel were 'citizens in uniform', subjected to the same laws as civilian members

---

[129] See specifically Jean-Marc Berlière, "Les pouvoirs de police: Attributs du pouvoir municipal ou de l'État? Une police pour qui et pour quoi faire? Démocratie, ordre et liberté sous la Troisième République" *Criminocorpus*, uploaded 1 Jan. 2009, https://journals.openedition.org/criminocorpus/259

[130] Penal Code, articles 114 and 190.

[131] Didier Fassin has made a similar observation in relation to police unaccountability in the 21st century. Didier Fassin, "Économie morale de la protestation: de Ferguson à Clichy-sous-Bois, repenser les émeutes", *Mouvements*, 83, no.3 (2015) 127.

of the public, and that the police was not an instrument of government.[132] As successive British governments could be confident that policemen would loyally defend the regime if necessary, concepts of police legitimacy were structured exclusively around the relationship with the public. The covenant between police and public rested on the commitment by the police to act legally, with proportionate force, and with accountability to the public as well as to the law. According to the official police rhetoric, policing was only legitimate if the public trusted that the police acted according to these principles, and that robust and transparent control mechanisms were in place to sanction serious transgressions.[133] Accordingly, it was crucial for the legitimacy of British policing that allegations of criminal acts were seen to be robustly handled by the criminal justice system, and in some cases, investigated by a parliamentary commission.[134] British police managers were therefore not able to defend their personnel at all costs, although, in practice, they had multiple ways of sheltering their men, and the vast majority of criminal allegations against police personnel never got anywhere near the courts. Cases of criminal prosecution were presented to the public as reassuring evidence that police managers and the criminal justice system were both willing and able to punish illegality and excessive violence. This also allowed police to claim that malpractice, rather than being systemic, was isolated to a few 'rotten apples'.

---

[132] David Taylor, *The new police in nineteenth-century England* (Manchester, 1997) 77-80; Clive Emsley "Control and Legitimacy: The Police in Comparative Perspective since circa 1800" in eds. Clive Emsley, Eric A. Johnson and Pieter Spierenburg, *Social control in Europe 1800-2000* (Columbus, 2004) 199.

[133] Parliamentary Papers 1830 /515 Return of Numbers of Divisions in Metropolitan Police District; General Orders issued by Secretary of State (7 June 1830); A Return of all General Orders, issued by the Magistrates appointed under the Act of 1829, since the formation of the New Police.

[134] *Report from the Select Committee on the Police of the Metropolis*, Parliamentary Papers (600) Vol. XVI (London, 1834); *The Royal Commission upon the Duties of the Metropolitan Police* (London, 1908); *The Royal Commission on police powers and procedures* (London, 1929).

In Prussia, the legitimacy of policing underwent significant transformations from the Bismarck era to the Wilhelmine era of the 1890s. The principle that the authority and interests of the state prevailed over citizens' rights had deep roots in the absolutist tradition, and was further strengthened by Napoleonic influences on Prussian reforms of the early 19th century. Yet, Bismarck slowly and reluctantly recognised the *Rechtsstaat* principle that public officials had to operate within the boundaries of the law and that the interests of the state could not prevail over citizens' rights. For Bismarck this was the price for getting the liberal opposition to accept the political compromises that allowed the ruling Prussian establishment to maintain its influence, and after 1871 their acceptance of his construction of German unification from above.[135] With broad consensus among mainstream legal scholars that the *Rechtsstaat* principle committed police to act within the boundaries of the law, Prussian courts increasingly functioned as an integral part of the police accountability mechanisms. During the 1890s, it became all the more urgent to strengthen the legitimacy of the police and the criminal justice system, as the Social Democratic Party used police malpractice and evidence of unaccountability very effectively to undermine the legitimacy, not just of Prussian policing, but of the political regime. By the Wilhelmine era, the idea that the interests of the state prevailed over citizens' rights was no longer seriously discussed, but had become associated with absolutist arbitrary rule of a bygone era.[136]

In France, by contrast, the continued practice of non-prosecution of police personnel became ideologically tied up with the notion that the survival of the Republic depended on the ability of the police to intervene with unrestricted force against actions that were seen as potentially harmful to the Republic. So rather than being associated with arbitrary absolutist rule, the position of French police personnel outside the reach of the law was justified in the

---

[135] Funk, *Polizei und Rechtsstaat*, 180-1 & 296.

[136] Michael Stolleis, *Public Law in Germany 1800-1914* (Oxford, 2001) 64-66; Hett, *Death in Tiergarten*, 226-7

name of respect for the authority of a democratic, progressive republican regime. Yet, as the regime stabilised, the continued refusal to allow allegations of police illegality to be tried in open court became increasingly difficult to defend.

So why did the critics fail to force governments to change this practice? Firstly, the fiercest critics of this practice were also staunch republicans, who did not want to undermine the legitimacy of the Republic, and therefore had to strike a careful balance in their attacks on police unaccountability without hurting the legitimacy of the Republic. Secondly, the political fragmentation in the population and the press allowed successive interior ministers to avoid addressing the uncomfortable issue of police unaccountability to the law. While many groups criticised police violations against members of their own group, they were prepared to accept police acting without legal restrictions against their political opponents. As the Zirn case suggests, even French civil liberties activists were willing to overlook police illegality and accept unaccountability if the victim was supported by an opposing political faction.

For successive interior ministers the main priority remained to keep the fragile covenant between the Third Republic and the Paris police force intact. Sheltering police personnel from individual responsibility was central to this covenant, and any other concern was secondary. This priority solved short-term embarrassment over malpractice involving police violence and illegality. Yet, the lack of transparency and the secretive handling of citizens' grievances exacerbated suspicions of systematic cover-ups of violence and malpractice, and fuelled vitriolic attacks on the republican system from the far-left and the far-right. It also gave credence to the "black legend" of French policing, including conspiracy theories that depicted the Paris police as the henchmen of a self-serving republican establishment and the repository of dirty secrets that dared not see the light of day. In the long run, the continued shrouding of police malpractice in institutional opaqueness and the refusal to allow serious police illegalities to be tried in open court thereby created a long-term toxic legacy of public mistrust.

X. CONCLUSION

Between 1871 and 1914, French practice of not prosecuting police personnel became ever more at odds with developments in Britain and Prussia, where courts played an increasing role in mediating conflicts between police personnel and individual citizens. Leaning on the republican principle that the interests of the Republic and respect for public authorities prevailed over citizens' rights and liberties, successive French governments were unwilling to strengthen the position of citizen in any way. With the French judiciary at all levels refusing to enforce the Penal Code against police in active service, aggrieved citizens continued to be barred from taking legal action against violations committed by the police. It was highly ironic for a regime that saw itself as politically progressive and a beacon of human rights, that the rationale of defending progressive and liberal republican ideals, which was also used to deny French women were denied the right to vote until 1944, justified the maintenance of citizens in an almost completely powerless position in relation to transgressive policing.

The discrepancies between French practices and developments in other European and North American countries challenges historians to continue their critical reassessment of the implications of French republican values within a comparative perspective. British policing has long been hailed for its levels of accountability to the public, with French and Prussian policing held up as the negative counter-image to public-oriented policing. Despite much research highlighting the often inglorious reality of British policing behind the positive public rhetoric, British policing did maintain higher levels of police accountability compared to both France

and Prussia. Nevertheless, French practices fall considerably behind developments in Prussia. This is a provocative finding, as historians of the German Empire commonly deride limitations on police accountability as a reflection of the semi-democratic elite-driven political regime. In contrast, as most historians working on nineteenth-century France hold a fundamentally positive attitude towards the Third Republic and its values, the republican regime had been held to much lower standards over its policing practices than the German Empire. Poor policing practices have been explained away as Jacobin and Napoleonic legacies that were carried over into the Third Republic, or justified as necessary for the defence of the republican regime. Yet, the French Republic maintained these features while Prussia, despite its strong absolutist and state-oriented traditions, strengthened structures of police accountability to the citizens under successive conservative and elite-driven governments with no liberal or progressive ideology. The Third Republic extended democratic participation; yet the refusal to empower citizens and its failure to develop legal and procedural frameworks by which citizens could meaningfully defend their rights and liberties became a long-term heavy legacy affecting French police-public relations right through to the 21st century.