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The International Way of Expertise. The first World
Court and the Genesis of Transnational Expert Fields

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Abstract:

The article argues that “international expertise” is not just a mere continuation of national forms of expertise “at the international level”, but has a distinct social and professional pattern (defined as constitutive of a ‘weak expert fields’), one that needs to be considered in order to account for the definitional power of experts in global governance. The paper tracks the genesis of this specificity in the case of international legal expertise, arguably the template against which other forms of expertise have historically built their own professional projects. Getting back to the immediate post-WWI period and the League of Nations as the inaugural scene for the power-knowledge nexus at the international level, the paper analyses the drafting of the first World Court in 1920 as a critical formative moment for the definition of the “international expert”. While drafters agreed on the creation of the first permanent and professional court, they simultaneously renounced to define who the permanent professionals of that court would have to be, therefore depriving international law of any strong supranational governance unit. The paper argues that this initial uncoupling between the autonomy (of the court) and the heteronomy (of the international lawyer) has shaped the enduring “weak” structure of transnational expert fields.

Keywords:

International courts; lawyers; expertise; transnational fields

By many standards, transnational expert fields look like their national counterpart. Functionally speaking, one will find « congresses », « learned societies », « scholarly journals » producing disciplinary rationalizations and theories on the state of international affairs, just like they would exist nationally. Regardless of the disciplinary domain or the policy area, a vast array of international research institutes, expert committees and think tanks converge around the “coral reefs” of international organizations¹ such as the United Nations’ agencies or the European Commission, providing consultancies and expertise in pretty much the same way one would find in national settings vis-à-vis State departments and ministries. This ‘*air de famille*’ extends to the rhetoric of expertise mobilized in these settings. As a number of sociologists², political scientists³, transnational historians⁴ and critical legal scholars⁵ have pointed out, the vernacular of global governance’s experts provides diagnoses, narratives (of “progress” and of “intervention”), argumentative strategies (of depoliticizing) and repertoires of justification that have developed along the model of national expertise.

As a result, international expertise has often been thought of as a mere continuation of national expertise under other forms, just another domain of intervention for experts. The tradition of ‘epistemic communities’ studies⁶, arguably the most successful conceptual apparatus when it comes to studying knowledge-based networks, does not help in this regard, as it does not differentiate between national and international forms of expertise, taking the notion of “expertise” as a sort of black-box that travels unchanged from context to context and from level to level. While international expertise has indeed been built along the lines of its national counterpart, it would be seriously misleading to take them as interchangeable. It would lead to overlook the fact that what is performed, exchanged and produced under the aegis of producing “international expertise” is by many standards very different from what occurs in national settings.

Most recently, a new stream of scholarship on international forms of expertise has actually provided a more complex picture of international experts⁷... Grounded on Pierre Bourdieu’s field-theory, but adapting the toolbox to the study of international settings, they have pointed at the *particular structure* of “transnational” fields in domains as different as international terrorism, European law, monetary policies, international political economy. While these transnational fields are

¹ Sidney Tarrow, *The New Transnational Activism*, Cambridge, Cambridge University Press, 2005.

² Yves Dezalay and Bryant Garth, « Hegemonic Battles, Professional Rivalries, and the International Division of labor in the market for the import and export of State governing expertise », *International Political Sociology*, 5 (3), 2011, p. 276-293.

³ Stephanie Mudge and Antoine Vauchez, “Building Europe on a Weak Field. Law, Economics and Scholarly Avatars in Transnational Politics”, *American Journal of Sociology*, 118(2), 2012, pp. 449-492; Nicolas Guilhot, *The Democracy Makers: Human Rights and the Politics of Global Order*, New York, Columbia University Press, 2005.

⁴ See Pierre-Yves Saunier, « La secrétaire générale, l’ambassadeur et le docteur. Un conte en trois épisodes pour les historiens du ‘monde des causes’ à l’époque contemporaine, 1800-2000 », *Monde(s). Histoire, Espaces, Relations*, 1(1), 2012, pp. 29-47.

⁵ David Kennedy, « The Politics of the Invisible College. International Governance and the Politics of Expertise », *European Human Rights Law Review*, 5, 2001, p. 463-497; Martii Koskeniemi, *The Gentle Civilizer of Nations. The Rise and Fall of International Law*, Cambridge, Cambridge University Press, 2001.

⁶ Emmanuel Adler, Peter Haas, “Conclusion: Epistemic Communities, World Order, and the Creation of a Reflective Research Program”, *International Organization*, 46(1), 1992, p. 367-390.

⁷ Along these lines, see in particular : Antonin Cohen, « ‘Ten Majestic Figures in Long Amaranth Robes’: The Formation of the Court of Justice of the European Communities » in Bruno de Witte and Antoine Vauchez (eds.), *Lawyering Europe. European Law as a Transnational Social Field*, Oxford, Hart Publishing, 2013 ; Mikael Madsen, « Human Rights and the Hegemony of Ideology: European Lawyers and the Cold War Battle over International Human Rights », in Y Dezalay & B Garth (eds), *Lawyers and the Construction of Transnational Justice*. Routledge, Abingdon, 2012, pp. 258-276 ; Lisa Stampnitzky, « Disciplining an Unruly Field: Terrorism Experts and Theories of Scientific Production », *Qualitative Sociology*, vol. 34 (1), 2011, p. 1-19; Frédéric Lebaron « Central bankers in the contemporary global field of power », *The Sociological Review*, 56 (1), 2000, 121-144; Antoine Vauchez, « The Force of a Weak Field », *International Political Sociology*, 2008, p. 120-144.

featured by a general agreement on the relevant issues at stake and the legitimate techniques and vocabularies at play, they all remain under-regulated fields featured by weak units of internal governance. On issues usually considered as key to the development of professional expertise⁸, such as peer control over recruitment, rights to practice, licensing processes, there is no such thing as an international equivalent to the strong professional and disciplinary settlement of national experts. Deprived of state-sanctioned monopolies and of strong regulatory bodies supervising professional practices, transnational expert fields are marked by structurally *weak* internal differentiation and porous boundaries with the neighboring fields (politics, bureaucracy, NGOs, academia, economics). In the absence of supranational governance units able to control and certify what it takes to be or to become an “international expert”, these fields accommodate a great variety of professional profiles, thereby turning these spaces into *crossroads* where otherwise distant, if not antagonist, types of actors and legitimacies converge and blend. This can be easily assessed by looking at the great variety of social and professional profiles that one will find under the cap of the “international experts”, in the corridors of the conferences, among the members of expert committees called upon by international organizations, in the academic journals on international affairs: former ministers, supreme court judges, high level diplomats, IO’s high civil servants, human rights’ activists, business lawyers, academics, public affairs’ consultants,

Most often than not, the “weak” social and professional structure of transnational expert fields is analyzed as a mere sign of incompleteness and as a transitory feature in an overall process of ‘internationalization’ that will progressively get closer to “normal” forms of expertise as embodied by national standards⁹. Yet, various studies actually show the contrary as ‘weakness’ is actually an enduring feature of “transnational expert fields”¹⁰. While there is a growing ‘occupational’ market for experts at the international level, the professional organization of expertise has remained strikingly weak at the international level. The densification of transnational experts’ networks has not come along with equally strong international ‘professional projects’ building the same credentialistic and legalistic roots that exist for national experts in domains such as law, economics or political science. Rather than following this evolutionary perspective, I argue that this “weak” professional settlement of international expertise is not just a transitory phase but constitutes the distinct and historically-grounded pattern of “transnational expert fields”. I suggest that by taking this perennially weak (internal and external) structure of transnational expert fields seriously, one can gain a better understanding of what is “international expertise” and how it connects with policies- and polity-building at the international level¹¹.

This weakness of transnational expert fields suggests two central hypotheses : first, as they are crossroads for a variety of (bureaucratic, political, legal, academic, etc.) actors who converge under the aegis of building an international expertise, these weak expert fields are not external to the politics and policies that claim to decipher; they actually form the very *terrain* on which overarching cognitive frames are debated¹² ; second, as they are sites where a variety of (bureaucratic, political, legal, academic, etc.) capitals converge, they are featured by specific pattern of capitalization of expert authority (“notables”), based on the accumulation of capital *across* a variety adjacent fields (bureaucratic, political, legal, academic, etc.). Of course, one should certainly not overemphasize, let

⁸ Magali Sarfati Larson, *The Rise of Professionalism. A Sociological Analysis*, Berkeley, University of California Press, 1979; and Andrew Abbott, *The System of Professions*, *op. cit.*

⁹ This argument is developed in greater details in Antoine Vauchez, “Introducing a Weak Field Approach to the Study of Transnational Settings” *International Political Sociology* 5(3), 2008, p. 340–45.

¹⁰ Lisa Stampnitsky, « Experts, State and field-theory. Learning from the case of terrorism », *Critique internationale*, vol. 59, 2013, p. 89-104.

¹¹ On the notion of ‘weak fields’, see Antoine Vauchez, “The Force of a Weak Field. Law, Lawyers and the Government of Europe. Elements for a Renewed Research Agenda”, *International Political Sociology*, vol. 2, 2008, pp. 128-144;

¹² Stephanie Mudge and Antoine Vauchez, “Building Europe on a Weak Field. Law, Economics and Scholarly Avatars in Transnational Politics”, *art. cit.*

alone naturalize, the difference between “national” and “transnational” expert fields¹³. However, while there are some national fields of expertise that may have an equally weak social structure lacking state-sanctioned monopolies and strong professional governance¹⁴, I argue in this paper that the weakness is actually a *defining* and *enduring* feature of transnational expert fields.

To support this claim, I suggest to trace back how transnational expert fields initially formed and consolidated. In line with Max Weber’s reading of fields (or ‘spheres of values’) as the product of specific *historical* processes, and with Pierre Bourdieu’s understanding of fields’ differentiation as part of a long-term narrative of State-formation¹⁵, I argue that “fields” are not universal and trans-historical social units but context-specific and historically-grounded¹⁶. In a context where the notion of “field” has increasingly been used in a de-historicized and abstract manner (“one size fits all”)¹⁷, I suggest that it would be beneficial to bring history back in and pay attention to the historical trajectories of different types of fields. Just like « national expert fields » have historically emerged in deep entanglement with State-building processes¹⁸, I contend hereafter that “transnational expert fields”¹⁹ have a particular social and professional pattern (hereafter defined as « weak » in comparison to their national counterpart), whose formation and trajectory can be traced back from the first part of the XXth century. If « transnational expert fields » have a pattern of their own, then it is the task of the sociologist to trace back their historical trajectory. By doing this, I do not mean to engage in historical investigation like an historian would do, neither do I try to write a full history of international expertise; rather, I wish to explore formative moments, small sequences of time where a particular social and professional constellation coalesces and consolidates, thereby progressively marginalizing other possible futures for international expert fields. In line with historical institutionalism²⁰, but following more broadly the tradition of historical sociology, I use history here as a method, singling out « historical sequences in which contingent events set into motion institutional patterns or event chains that have deterministic properties »²¹. In this context, the institutional genesis of the first World Court in the immediate post-WWI period and the formation of the first permanent and professional international judiciary stand out as one essential critical juncture for the invention of international forms of expertise. Drawing from previous research conducted some years ago with Guillaume Sacriste on the authority of international lawyers in the 1920s (2007)²², but expanding it to a whole new empirical material, I have followed extensively the public debates over the creation of a World Court in the immediate post-WWI period: this includes essentially journals, *mémoires*, proceedings of

¹³ On this, see recently, Gisèle Sapiro, « Le champ est-il national ? La théorie de la différenciation sociale au prisme de l’histoire globale », *Actes de la recherche en sciences sociales*, n°200, déc. 2013, pp. 70-86.

¹⁴ See the field of American think tanks as analyzed by Tom Medvetz, *Think tanks in America*, Chicago, University of Chicago Press, 2012.

¹⁵ In particular : Pierre Bourdieu, *Sur l’Etat. Cours au Collège de France*, Paris, Seuil, 2012.

¹⁶ Cf. Lisa Stampnitsky, « Experts, State and field-theory. Learning from the case of terrorism », *Critique internationale*, vol. 59, 2013, p. 89-104.

¹⁷ The most important and wide-ranging theoretical construction in that direction is that of Neil Fligstein and Doug McAdam, « Toward a General Theory of Strategic Action Fields », *Sociological Theory*, 2011, vol. 29, p. 1-26.

¹⁸ Pierre Bourdieu, *Sur l’Etat*, op. cit.

¹⁹ See also Madsen Mikael, “Transnational Fields: Elements of a Reflexive Sociology of the Internationalisation of Law”, *Retfaerd. Nordisk Juridisk Tidsskrift*, 29 (3), 2005, pp. 34-41

²⁰ In a large literature, see Paul Pierson and Theda Skocpol, "Historical Institutionalism in Contemporary Political Science," in Ira Katznelson and Helen Milner (eds.), *Political Science: The State of the Discipline*, New York, Norton, 2002, p. 693-721.

²¹ James Mahoney, « Path dependence in historical sociology », *Theory and society*, 29, 2000, pp 507-548; for an overview of this approach, see Pierson Paul, Theda Skocpol, "Historical Institutionalism in Contemporary Political Science," in Ira Katznelson and Helen Milner (eds.), *Political Science: The State of the Discipline*, New York, Norton, 2002, p. 693-721.

²² See in particular, Guillaume Sacriste and Antoine Vauchez, « The Force of International Law: Lawyers’ Diplomacy on the International Scene in the 1920s. », *Law and Social Inquiry*, vol. 32, 2007, p. 83-107.

learned societies, major newspapers and the minutes of the 35 meetings of the Advisory committee of jurists (hereafter the “ACJ”) that was constituted by the Council of the League of Nation in order to draft the court’s Statute (16th June 1920-12th July 1920). I have also considered the broader historical phase that runs from the entry into effect of the Covenant of the League of Nations on the 10th January 1920 to the first year of functioning of the Permanent court of international justice (hereafter, the « World Court ») when the Statute entered into force (from the 15th February 1922 onwards)²³. While there are some in-depth studies of this historical episode²⁴, my purpose here is to study it with the lenses of a historical sociology of experts and expertise. In line with the ‘instrumental’ conception of historical research as a tool for a sociological inquiry delineated above, I have focused essentially on the debates and controversies over the definition of the international judicial *office*, with a particular interest on how social and professional requirements and incompatibilities had been set.

The general claim of this paper is that this post-WWI episode is not just illustrative of transnational expert fields, but is actually *constitutive* of their particular social and professional structure as “weak fields”. While the drafters of the World Court Statute agreed on the creation of a *permanent* judicial institution, they simultaneously gave up on defining who the *permanent* professionals of that permanent institution would be, thereby accepting that there would be no corresponding supranational profession for that new international organization. The under-regulated and porous field of international law that coalesced on that particular occasion forms a new type of social and professional arrangement constitutive of transnational expert fields²⁵. In a preliminary section, I explain why the post-WWI drafting of the World Court can be taken as an authentic turning point in the historical trajectory of transnational expert fields. In the second section, I trace back the formation of a ‘tribunalist paradigm’²⁶ within the committee, that recognizes the necessity of a permanent and professionalized court at the international level. Such unlikely advancement—I argue in a third section—is in part made possible by the failure to design a supranational judicature for the new court, thereby authorizing a large variety of diplomats, politicians and civil servants to access judicial office at international level. In the concluding section, I analyze how this historical detour can shed a new light on transnational expert fields.

²³ The proceedings of the ACJ is however the very core of the empirical material considered for this paper as it is the arena where the vast majority of the deals on the Statute originated: Permanent Court of International Justice, Advisory committee of jurists, *Procès-Verbaux of the Proceedings of the Committee, June 16th-July 24th, with Annexes*, The Hague, Van Langenhuysen Bros., 1920 (hereafter *Proceedings*). The fact that many of its members would then later become also representatives of their own country in the meetings of the November-December 1920 General Assembly discussing the final draft of the Statute was certainly critical in maintaining the initial outcome almost unchanged. The subcommittee of the General Assembly drafting the Statute of the Permanent court was chaired by Léon Bourgeois and 5 of its 11 members had taken part to the ACJ committee: League of Nations, *Records of the First Assembly. Plenary Meetings*, Geneva, 1920. I also follow the drafting of the Court’s *Règlement intérieur* in its first year of functioning: Cour permanente de justice internationale, *Actes et documents relatifs à l’organisation de la Cour. Préparation du Règlement de la Cour. Procès verbaux des séances de la session préliminaire de la Cour (30 janvier-24 mars 1922)*, Publications de la CPIJ, Série D, Leyden, Sijthoff, 1922.

²⁴ To this day, the most complete account is by Ole Spiermann, “Who Attempts Too Much Does Nothing Well: The 1920 Advisory Committee of Jurists and the Statute of the Permanent Court of International Justice”, 73, *British Yearbook of International Law*, 187, 2002, and his book *International Legal Argument in the Permanent Court of International Justice. The Rise of the International Judiciary*, Cambridge, Cambridge University Press, 1996. Other studies include: Lloyd Lorna, « ‘A springboard for the future’. A historical examination of Britain’s role in shaping the optional clause of the PCIJ », *American Journal of International Law*, 1985, pp. 28-52; and Dune Michael, *The United States and the World Court (1920-1935)*, Pinter Publishers, Londres, 1988.

²⁵ This ‘weakness’ is quite remarkable when one compares this structure with *national legal* fields historically anchored in solid professional settlements : cf. Andrew Abbott, *The System of Professions. An Essay of the Division of Expert Labor*, Chicago, Chicago University Press, 1988; Richard Abel and Philip Lewis (eds), *Lawyers in Society. An Overview*, Berkeley, University of California Press, 1995, 3 vol.

²⁶ On the notion of tribunalism, see Thomas Skouteris, *The Notion of Progress in International Law Discourse*, The Hague, T M C Asser Press, 2010.

I. The Constitutive Potential of Post-WWI Critical Juncture

Very few documents have actually channeled and delimited in such a lasting manner all subsequent undertakings in the domain of international affairs as the World Court Statute. Whereas most League of Nations' institutions were profoundly reframed in post-WWII period in the light of what was viewed as their overall 'failure' in the 1930s, the Permanent Court of International Justice was among the very few to be almost entirely saved in the 1945 Charter of the United Nations²⁷. Overall, the Statute is a striking case of institutional isomorphism and path-dependency: while international and regional courts have proliferated ever since WWII²⁸, the Statute has remained the essential backdrop and template against which 'true (international) courtness' has been assessed²⁹. This first section analyzes reasons for which the drafting of the first World Court is a turning point in the historical trajectory of transnational expert fields in general.

i) An Inaugural Scene for the Power-Knowledge Nexus at the International Level

By many standards, post-WWI period forms the act of birth of the power-knowledge nexus at the international level. While traditional historiography on the inter-war period has long been essentially « rise and fall narratives »³⁰, with international relations' scholars pointing at the many « illusions » and « failures » of League of Nations, recent streams of scholarship in global and transnational history have provided a more complex account, underscoring the critical role of the International Labor Organization (ILO) and the League of Nations (LoN) in *setting the stage* for a whole range of international policies (from human rights to drug control, public health or cultural exchange)³¹. As these authors have convincingly argued, Geneva constituted an authentic laboratory where international forms of expertise, knowledge-based networks, and repertoires of solutions for international government were first defined. No one would deny that early forms of international scientific socialization (congresses, learned societies, had emerged before WWI, providing a first transnational umbrella for academic mobilization³². However, these first experts' arenas had no international political outlet as the international organizations that existed at the time –most of them actually founded after 1870- were essentially technical organizations with limited competences in domains such as navigations, communications, commerce, etc³³... The multilateral institutional setting that emerged in Geneva from 1919 onwards, and its unforeseen expansion in a variety of policy

²⁷ Manley Hudson, "The Succession of the International Court of Justice to the Permanent Court of International Justice", *American Journal of International Law*, 51 (3), p. 569-573, 1957, p. 570.

²⁸ See Karen Alter, "The Evolving International Judiciary", *Annual Review of Law and Social Sciences*, 2011, p. 387-415, and Romano Cesare, Daniel Terris, Stephen Schwebel, Joanne Myers, *The International Judge: An Introduction to the Men and Women Who Decide the World's Cases*, Brandeis, 2007.

²⁹ From European courts to more recent international courts such as the International Criminal Court, all statutes have drawn extensively from that of 1922, often copy-pasting some entire sections of it. As Jiri Malenowski indicates : « the European Court of Justice, the International Court of Justice, the European Court of Human Rights, or the international tribunal for the law of the sea are in large part modeled on the Statute of the Permanent court of international justice, in particular for what regards the statute of judges » : Jiri Malenowski, « L'indépendance des juges internationaux », *Recueil des cours de La Haye*, vol. 349, 2010, pp. 9-276, p. 36 (my translation).

³⁰ Susan Pedersen, "Review Essay. Back to the League of Nations", *The Am. Historical Review*, 112(4), 2007.

³¹ Akira Iryie, *Global Community. The Role of International Organizations in the Making of the Contemporary World*, Berkeley, University of California Press, 2002 ; Mark Mazower, *Governing the World. The Rise and Fall of an Idea*, London, Allen Lane, 2012; Sandrine Kott and Joëlle Droux, *Globalizing Social Rights. The International Labor Organization and Beyond*, Palgrave MacMillan, 2013.

³² Anne Rasmussen, *L'Internationale scientifique 1890-1914*, Ph.D. dissertation, Department of History, Ecole des Hautes Etudes en Sciences Sociales de Paris, 1995; Johan Heilbron, Nicolas Guilhot, and Laurent Jeanpierre, "Towards a Transnational History of the Social Sciences", *Journal of the History of Behavioral Sciences*, 44 (2), 2008, p. 146-160.

³³ Michael Wallace and David Singer, "Intergovernmental Organization in the Global System (1815-1914). A Quantitative Description", *International Organization*, 2(24), 1970, p. 239-267.

domains dramatically changed the international state of affairs. With the creation of the League of Nations (hereafter « LoN ») and the International Labor Organization (hereafter « ILO »), international organizations moved from *ad hoc* technical institutions populated by professionals most often recruited locally, to a set of generalist institutions with far-reaching competences and a permanent body of several thousand international civil servants³⁴.

In their search for an autonomous source of legitimacy that would grant them some autonomy vis-à-vis the “great powers,” the Permanent secretariat as well as the new web of *bureaux*, working sections and permanent subcommittees of the LoN and of the ILO immediately generated a wide variety of international expert groups, bringing to Geneva hundreds of experts³⁵ on matters as different as air navigation, hydrographic issues, contagious diseases of animals, opium traffic, protection of children, refugees, health-related issues, etc. Thereby, a nascent field of international expertise emerged out of the competition between various disciplinary and national traditions, particularly when it came to providing consultancy in matters of general politics. In a post-war context, characterized by the collapse of the preexisting frameworks of understanding of international relations (cf. the diplomatic handling of the « Concert of Europe »), a new setting was therefore inaugurated where academic disciplines —the history of diplomatic relations, international political economy, international law, competed over the production of the international expertise most relevant and legitimate for the leaders of this new multilateral framework.

ii) *Law as the Template for Expert Fields*

Yet, on that battleground, international law benefited from a sort of “natural” precedence over its competitors. Proof to that is the fact that the creation of the Advisory committee of jurists (« ACJ »)-tasked with the drafting of the “permanent court” that the Covenant referred to in its article XIV was one of the very first decisions taken for the Council of the League of Nations as early as February 1920, that is less than a month after the entry into force of the treaty of Versailles and the Covenant. Given the central role of law schools in the training and socialization of political and bureaucratic elites in the first part of the XXth century³⁶, legal expertise was undoubtedly the most natural device when it came to erect the newly-established international organizations on firm grounds³⁷. Ever since the turn of the XXth century, a ‘tribunalist’ movement had actually emerged which viewed international adjudication as the most rational and efficient technique for establishing a lasting peace. The coalition, very diverse, was composed of philanthropists, social activists, and was famously heralded by liberal statesmen such as Elihu Root or Léon Bourgeois, both of them Peace Noble Prize (1912 and 1919) and ‘gentlemen politicians of the law’³⁸. In the decade preceding the opening of the ACJ, countless World Court projects had actually been put forward by philanthropic organizations (Carnegie endowment for international peace), political movements (the Fabian society in 1916), associations (the Netherlands’ branch of the *Organisation centrale pour une paix durable* in 1917, the

³⁴ On this, see Frédéric Megret, “The Rise and Fall of the International Man”, Oxford University Press, to be published.

³⁵ Sacriste Guillaume, Antoine Vauchez, “The Force of International Law”, art. cit.; Neil de Marchi, “League of Nations’ Economists and the Ideal of Peaceful Change in the Decade of the Thirties”; in Craufurd Goodwin (eds.), *Economics and National Security. A History of Their Interaction*, Duke University Press, Durham, 1991, p. 143-179.

³⁶ See Edward C. Page, Vincent Wright (eds), *Bureaucratic Elites in Western European States. A Comparative Analysis of Top Officials*, Oxford UP, 1999 ; Heinrich Best, Maurizio Cotta (eds), *Parliamentary Representatives in Europe 1848-2000. Legislative recruitment and Careers in Eleven European Countries*, Oxford, Oxford University Press, 2000.

³⁷ On the symbiotic relationship between law and State-building processes, see Ernst Kantorowicz, “Kinship Under the Impact of Scientific Jurisprudence”, in M. Clagett, G. Post, R. Reynolds (eds), *Twelfth-Century Europe and the Foundation of Modern Society*, Madison: University of Wisconsin Press, 1961, p. 89–111; and, most recently, Pierre Bourdieu, *Sur l’Etat. Cours au Collège de France (1989-1992)*, Paris, Seuil, 2012.

³⁸ On this, see Guillaume Sacriste and Antoine Vauchez, « La guerre hors-la-loi. 1919-1930 », *Actes de la recherche en sciences sociales*, n°151-152, 2004.

Conference of the League of Nations associations in 1919)³⁹, learned societies (*Union juridique internationale* in 1920), or even countries (the joint expert committee nominated by the governments of Denmark, Norway and Sweden in 1919), etc⁴⁰... The political atmosphere of the post-WWI period, in particular the general agreement among diplomats and statesmen that the event of the war imposed radically new solutions (different from the power balance of the « Concert of Europe »), opened an unprecedented window of opportunity: suddenly, what once seemed an utopian project became a sound institutional prospect capable of marking the new foundations on which the League of Nations and international relations would have to be grounded.

That this legal project be on the top of the League of Nations' political agenda is certainly not a trivial fact in the history of international expertise. As historians and sociologists of professions have shown, legal expertise has historically been the laboratory where modern and professionalized forms of expertise emerged. In her comparative historical sociology of professions in Europe, Maria Malatesta exemplifies that fields of expertise as we know them nationally have been profoundly shaped by professional models initiated in the legal profession in the second half of the XXth century⁴¹. The first bills concerning professional regulation and expertise that were passed in the years immediately following the foundation of Wilhelmine Germany, post-Risorgimento Italy, or IIIrd Republic France, have indeed all concerned the professional practice of law. In these circumstances, a triangular pattern of professional governance emerged that brought together in a stable relationship the legal profession, law schools, and the State, linking together the licensing power of the first, the credentializing capacities of the second and the nation-wide monopolies granted by the third⁴². This triadic structure of national legal field would soon become the template and the ideal-type against which other types of expertise modeled their own « professional project »⁴³ as they concentrated on acquiring certified forms of knowledge, clear-cut occupational boundaries, professional self-regulation and state-sanctioned monopoly⁴⁴.

iii) Charting the Field of International Law

Drafting a *Court Statute* in this critical juncture implied much more than just writing down rules of procedure. It meant first of all providing international legal expertise with *the* critical institutional device when it comes to assure its social robustness. Not only did the creation of a permanent « court » would evidence the fact that international law was a body of law “like the others” (that is in part autonomous from political logics and justiciable before a court), thereby fortifying its social authority in international affairs, but it would also provide international law professionals with an *institutional platform* for their claim for autonomy. With the scientization of legal knowledge in the second half of

³⁹ On these movements and their blossoming in the immediate post-war period, see Jean-Michel Guieu, *Le rameau et le glaive. Les militants français pour la Société des Nations*, Paris, Presses de Sciences Po, 2008.

⁴⁰ For an inventory of these many projects, see Antonio Sanchez de Bustamante, *The World Court*, New York, Carnegie Endowment for International Peace, 1925.

⁴¹ See also : Andrew Abbott, “Linked Ecologies: States and Universities as Environments for Professions”, *Sociological Theory*, vol. 23, p. 245-74.

⁴² Classic studies in this sense include: Hannes Siegrist, « Professionnalisation with the brakes on : the legal profession in Switzerland, France and Germany in the XIXth and early XXth century », *Comparative social research*, vol. 9, 1986, p. 267-298.

⁴³ Magali Sarfati Larson, *The Rise of Professionalism*, op. cit.

⁴⁴ Truly enough, there were knowledge-based professions such as doctors or architects that, in some European countries, had organized themselves earlier, none could claim an equally strong entanglement with State knowledge and elites.

the XIXth century⁴⁵, and its claim for the autonomy of the law, professionalized and independent courts had become *the* “clé de voute” marking the existence of an ‘authentic’ legal field.

Moreover, as they were giving birth to the first World Court, the ten legal experts brought together in the ACJ were designing much more than just an organization. As they would discuss modes of recruitment for international judges, parties allowed in the courtroom, judges’ interlocutors (lawyers, diplomats), official sources of the law (treaties, scholarship, etc...), or future projects (« a conference of the nations » for codification, the creation of a criminal court, etc...), the drafters were assessing the relative legitimacy of the various institutions (States, Council of the League of Nations, General Assembly, etc...), professional groups (law professors, State agents, diplomats, judges, etc...), and resources (political, economic, legal, bureaucratic) in the production of international law. As the Statute’s task was precisely to locate the ability and responsibility for the proper functioning of the World Court, it required to establish boundaries, roles and hierarchies that ultimately resulted in delineating a miniaturized representation of what the future field of international law would (and should) look like. As a result, the many definitional battles that emerged among the 10 legal experts were not just abstract controversies. The particular legal of political legitimacy of the Statute which originated its initial source (the Covenant of League of Nations) and its adoption by the General Assembly of the League of Nations, turned its drafting into an overall contest over the architecture of the field of international law and the relative weight of national models of law, institutions and professional groups.

iv) A Symbolic Coup

What ultimately constitutes the drafting of the World Court as a defining moment lies the fact that something new crystallized in the drafting process that had not emerged up to that moment. One should recall that the swift creation of the World Court, less than three years after the drafting committee had been nominated, marked a rather unexpected conclusion if one considers the many deadlocks that had previously hindered the emergence of international forms of adjudication. This is all the truer that, apart from giving a name to the new institution (a “permanent court of international justice”), the Covenant had provided very few indications as to what the “fourth principal organ” of the League of Nations (after the Secretariat, the Council and the General Assembly) ought to look like. Given such vagueness, many different outcomes were still possible and it seemed likely that the workings of the ACJ would result in the creation of just another arbitration court. Previous experiences in international courts and tribunals had actually not been very fortunate : in 1907, a Central American Court of Justice had been settled in Cartago (Costa Rica) but the experience was short-lived and did not survive the dramatic earthquake that destroyed the court’s building in 1910. The precedent of the Permanent court of arbitration established in The Hague in 1907 was not much more comforting: although it was still operating, most international lawyers considered it as both a ‘fake’ court (judging in ‘political equity’ rather than in legal terms) and a ‘failed’ court for it had proved incapable of preventing the world conflict. Given such precedents, it comes as no surprise that there be a great sense of uncertainty as the ACJ started to meet. Suffice it to look at a mere sample of the list of issues that the Legal secretariat of the League of Nations established as the agenda that the ACJ would have to tackle :

“What is the intention of the Covenant of the League of Nations as regards the juridical character of this Court. There are several alternatives. The Court may be regarded as a pure Court of Justice, or as a Court of Arbitration, or as a combination of the two”. And later : “what features should distinguish a permanent court of international justice ? Real permanency: how to define ? Can the above features (being a court) be conciliated with arbitral functions? If so shall new Court be, at

⁴⁵ On the rise of the scientific paradigm in law, see Guillaume Sacriste, *La République des constitutionnalistes*, Paris, Presses de Sciences Po, 2011 ; and Olivier Beaud and Erk Volkmar Heyen (eds), *Une science juridique franco-allemande ?*, Baden-Baden, Nomos, 1999.

the same time, Court of Justice and of Arbitration? (...) What qualifications should be fulfilled by the members of the Court? (...) Shall high juridical competency be required from all the members of the Court? (...) Where juridical knowledge is required, how shall the existence of such knowledge be stated? (...) Who is finally to decide in doubtful cases whether conditions are fulfilled or not?”, etc.⁴⁶

In this light, the agreement reached by the ACJ on the creation of a permanent, juridical and professionalized court can be read an authentic symbolic *coup* that marked a rupture with the past. The *New York Times* journalist sent to The Hague seemed himself astonished: “compared with other conferences of the last two years, the League Court conference can be said to be literally forging ahead. In spite of a wide divergence of opinion at yesterday’s session on the question of the laws of the court, a tentative agreement was reached this morning on the subject of minor changes (...) There is a feeling of great optimism among the jurists, who agree that the creation of a world court will a great fact”⁴⁷. The same could be said about the rather easy and diligent diplomatic process that spanned from the presentation of the ACJ Report on the 12th June 1920 to its actual adoption by the General Assembly and the Council of League of Nations on 13th December of that same year. Finally adopted and endorsed by the most legitimate international arenas and actors of the time, from individual States (with the still ambiguous exception of the United States⁴⁸) to the Council and the General Assembly, from diplomats to philanthropists or international statesmen, the Statute had become the natural common anchor point for the field of international law.

Basic Chronology of the World Court’s Genesis

10th January 1920: the treaty of Versailles and the Covenant officially come into effect.

13th February 1920: meeting of the second session of the Council of the LoN in London where the nomination of an Advisory committee of jurists tasked with the drafting of the World Court is announced.

16th June 1920: opening of the Advisory Committee of Jurists’ workings.

12th July 1920: official presentation of the Draft Statute for the ACJ.

30th July -5th August 1920: at the eight session of the Council of the LoN held in San Sebastian, the Draft Statute is presented.

23 October 1920: the Council of the LoN meets and revises the Draft Statute, depriving the Court of its compulsory jurisdiction.

17th November-16th December 1920: the Draft Statute is discussed at the third commission of the League of Nations’ General Assembly and, later, in the plenary session.

13th -14th September 1921: Election of the 15 judges of the court.

15th February 1922: Inauguration of the World Court in The Hague.

For all these reasons, the particular social and professional arrangement that came out of the workings of the Advisory committee of jurists had from its very beginning a strong constitutive potential not only for international law expertise itself but for transnational expert fields in general.

⁴⁶ Legal secretariat of the League of Nations, « Note on the Nature of the Permanent Court of International Justice », in Memorandum on the different questions arising in connection with the establishment of the Permanent court of international justice, pp. 32-40 and pp. 112-119.

⁴⁷ « League Court plan goes ahead rapidly », *New York Times*, 4 July 1920.

⁴⁸ Michael Dunne, *The United States and the World Court (1920-1935)*, London, Pinter Publishers, 1988.

II. Autonomizing the Law. The Genesis of the Tribunalist Paradigm

When Léon Bourgeois, French foreign affairs minister and well-known promoter of international adjudication, took the floor at the eighth session of the Council of the League of Nations in San Sebastian early August 1920, to present the World Court Statute that the Advisory committee of jurists had just drafted, he emphatically insisted on one essential novelty : the new court –he said- will be “a ‘truly’ Permanent Court, in which a regular jurisprudence can develop, a Court strictly juridical and rigorously judicial, free from all pre-occupations and all influence of a political nature”⁴⁹. While this is certainly a rather optimistic view of what the court actually was and would become, it is revealing of the fact that this organization would have to be assessed on new grounds: not anymore as a diplomatic tool aimed at securing « collective security » but as a *judicial* institution pursuing « justice ». Underneath this shift to a “tribunalist” paradigm lied the scientist belief –strong among the promoters of the World Court- that the judicial way of settling international disputes was politically and morally superior to any other forms of dispute resolution from political negotiation to good offices, from diplomatic conferences to mediation, etc... Hereafter, I argue that this initial agreement on the general principles underpinning the World Court was not trivial, nor inconsequential but actually instrumental to the formation of a field of international law hereafter defined as a set of specialized and interdependent actors and positions brought and bound together by a competition over the authoritative handling of international law expertise.

i) Ius Proprium

Interestingly, one of the very first questions that came to the ground in the ACJ was the apparently purely speculative issue of recognizing (or not) the existence of a *specific* province for international law, one distinct from that of politics. There were actually good reasons to believe that the ten wisemen would actually reject the idea that there be something like purely legal issues. In its Memorandum introducing the debates, the secretariate of the ACJ recalled that previous committees and congresses had acknowledged “the impossibility of drawing a precise line of demarcation between legal disputes of a legal nature and those general described as political”⁵⁰. When he opened the inaugural session, ACJ president the Belgium Descamps recalled that among the « difficulties submitted to the Jurists’ Committee (...) is the difficulty of finding a clear line of demarcation between those two classes (‘legal’ and ‘political’ issues), (given) the mixed character of certain differences which are considered as proceeding at the same time from law and from politics »⁵¹. There was in fact another reason to be sceptical about the possibility to draw a dividing line⁵². While they all had a law degree, “politics” was all over the place, the ten wisemen being themselves deeply embedded in national political and diplomatic networks. A majority of them were actually directly connected to their government, as former or current *jurisconsultes* (Ricci Buzzati), ambassadors (Adatci, Raul Fernandes, Lord Phillimore) or ministries (Gram, Hagerup, Root, Descamps). There were some full-time law professors (Geouffre de Lapradelle, Altamira) and judges (Loder), but even them owed their nomination to the committee to the fact that they had been advising and representing their national government in a variety of international conferences and treaty negotiations.

Strikingly however, they all recognized the extreme importance of proclaiming the existence of a dividing line between “law” and “politics”. All along the 35 meetings of the ACJ, recurring efforts would be made to keep the ‘political’ outside of the debates. Probably because these jurists remained

⁴⁹ “Proceedings of the fourth meeting of the second session of the council of the League of Nations”, in *Memorandum, op. cit.*, p. 23.

⁵⁰ Report addressed by the Swedish Commission to the Minister of Foreign Affairs, 21 December 1918, published in *Memorandum, op. cit.*, p. 157.

⁵¹ Baron Descamps, *Proceedings, op. cit.*, p. 45.

⁵² Michael Dunne, *The United States and the World Court (1920-1935)*, op. cit.

so closely connected to the defense/representation of their national governments, their exchanges rested on the gentlemen's agreements that each one of them would avoid bringing to the forefront what was so deeply divisive (ie national and diplomatic interests). This required self-discipline and a form of collective surveillance to any possible breach: when the British member, Lord Phillimore, indicated that the World Court would need to have an English judge in its ranks, the French member, Geouffre de La Pradelle disqualified the intervention as « a political argument » that was out of place. Even the most seasoned and prominent politician of the committee, Elihu Root, former US State secretary and republican leader, would however continuously « deprecate anyone's attributing a 'political aspect' to his presence (in the committee), adding that the work of the committee was « entirely technical »⁵³. Securing a purely legal discussion was not just a matter of keeping a dispassionate exchange, it was also a test of lawyers' capacity to provide a credible and rational methodology to tackle international political issues⁵⁴. It is not surprising therefore that when it came to recognize the *summa divisio* "between the political and the juridical point of view"⁵⁵, a clear majority emerged in favor of asserting the existence of an autonomous realm of (international) law. When the Italian jurist expressed a dissenting voice regarding the possibility of drawing a line between « politics and law, equity and justice » and of « founding the new Court on distinctions of this character »⁵⁶, « his views –a commentator reports- which were listened to with respect, did not have influence »⁵⁷...

ii) A Juridicized Court

The recognition of the law's *proprium* in international affairs was far from trivial : it implied that, just like in national legal systems, juridical issues could not be handled by a *ad hoc* and parties-based institution (such as arbitration tribunals), but exclusively through a permanent and specialized institution able to unveil, through its continuous case-law, the fundamental legal principles of the 'international community'. Yet again, drawing that dividing line between arbitration and adjudication was far from obvious as there had always been an overall confusion between the two at the international level. It was actually still relatively unclear whether the « permanent court » mentioned in the Covenant would be a 'political council', a 'juridical court' or an 'international academy' of wisemen: in the context of US political field for example, there was a sharp contrast between Elihu Root's enthusiastic support of judicial settlements' techniques and Woodrow Wilson's opposition to any legalistic understanding of dispute resolution⁵⁸. Even some of the strongest advocates of the project of an international court, like Brazilian prominent politician and law professor, Rui Barbosa, were actually highly critical about the idea of taking national courts as a model: « if the judicial system is preferable in the matter of relations between individuals, the arbitral system is the only one that is applicable between nations, who only submit to such authorities as they wish to accept », adding that the creation of a Court would be « rather a dangerous innovation, reactionary in its tendencies and in its probable results » (1907). The many names that had been suggested over the previous decade for the World Court actually all mixed judicial and arbitral terminologies : « permanent tribunal of arbitration », « court of arbitrators », « court of permanent arbitration »... Even the project heralded by Elihu Root and the American delegation at 1907 The Hague conference, arguably the project that was

⁵³ *New York Times*, 13 June 1920.

⁵⁴ Such recourse to science has to be related to the parallel emergence of a scientific paradigm in public law at the turn of the XIXth century in the major European countries, see Olivier Beaud, Erk Volkmar Heyen (eds), *Une science juridique franco-allemande ?*, Baden-Baden, Nomos, 1999; Guillaume Sacriste, *La République des constitutionnalistes*, Paris, Presses de Sciences Po, 2011.

⁵⁵ Geouffre de Lapradelle, *Proceedings, op. cit.*, p. 104.

⁵⁶ Ricci Buzatti, *Proceedings, op. cit.*, p. 104.

⁵⁷ James Brown Scott, *The Project of a Permanent Court of International Justice and Resolutions of the Advisory Committee of Jurists. Report and Commentary*, New York, Carnegie Endowment for International Peace, 1920, p. 28.

⁵⁸ Mark Mazower, *Governing the World*, op. cit.

pushing the most in the direction of « judicializing » international arbitration, was entitled a project for « a court of arbitral justice »...

In this context, the explicit preference of members of the ACJ for a permanent and judicialized court is far from trivial. Instead of defining the new institution as a continuation of diplomacy by other means, as had been done at the 1899 and 1907 The Hague Conference, the ACJ members claimed that the continuity would now have to be found with national models of justice. While admitting some of the specificities of international courts, the president of the Advisory Committee insisted on the need to “model the organism of international jurisdiction upon the prototype of national jurisdiction”⁵⁹: only a court –that is a specialized and permanent institution- would be able to provide the lasting (legal) principles for peace. All along the proceedings, ACJ members repeatedly insisted on the fact that they were building an ‘authentic court’, ‘a true court of justice’⁶⁰, ‘a court of justice in the true sense of the word’⁶¹, a ‘genuine court of justice’⁶², etc... This doesn’t mean that the Statute actually satisfied all expected features of ‘authentic’ courts, but rather that international courts would, from now on, be judged and assessed against standards of ‘true courtness’ as embodied by national models of judiciary.

iii) Professional Jurist vs. Diplomat

Last but not least, the recognition of a permanent court opened the floor for a debate over the composition of the bench itself. Here again, the idea of an international court exclusively composed of professional jurists made little sense in the pre-WWI period: it was considered obvious that, just as there was no separation between law and diplomacy, experienced ambassadors and diplomats would be the best possible candidate to hold the international judicial office. For instance, a reknown pacifist organization, the *Institut international de la paix*, had put forth a draft which proposed a permanent court of justice consisting of sovereigns and of ambassadors accredited to The Hague (plus the Dutch minister of foreign affairs who would be an *ex officio* member). And most of the other World Court projects only referred to ‘the highest moral reputation’ as a *requisit* for nomination. The exclusion of those who were then the very actors of the international politics, that is diplomats, was therefore far from obvious. Yet again, arbitrators quickly became the counter-example against which the new bench would have to be built. French law professor Geouffre de Lapradelle critically referred to the Permanent court of arbitration as a « college of mediators, diplomats, conciliators », « only half (of them) jurisconsults, the other half are politicians »⁶³. Creating an « authentic » court capable of dealing with specifically « legal matters » required the establishment of a « truly permanent and professional judicature such as we know to be assured in national jurisdiction » which implied to rule out politicians and diplomats from international judicial office.

On the whole then, the members of the committee, regardless of their oft antagonist national and political affiliations, agreed to recognize that international law as defined in the Statute was indeed a specific site of contention in international affairs. As they agreed on the relevant vocabulary (scientific) and rhetorical strategies (universalistic), as they shared the same belief in the value of the game and in the centrality of the Court therein, the members of the ACJ laid the basis for a transnational field of international law.

⁵⁹ Baron Descamps, *Proceedings, op. cit.*, p. 8.

⁶⁰ Léon Bourgeois, in League of Nations, Twentieth Plenary Meeting. Monday December 13th at ten o'clock. Records of the First Assembly, Geneva, 1920, p. 437.

⁶¹ Lord Phillimore, *Proceedings, op. cit.*, p. 104.

⁶² Elihu Root, quoted in Michael Dunne, *The United States and the World Court, op. cit.*, p. 44.

⁶³ Geouffre de Lapradelle, *Proceedings, op. cit.*, p. 48.

III. 'Heteronomizing' the Field: Manufacturing Weakness

This autonomization of specifically legal vocabularies and issues should not however hide the fact the field of international law that was emerging from the workings of the ACJ was organized on a profoundly heteronomous social and professional structure. In the following section, I show that the unanimity reached in the expert committee on the World Court Statute has only been made possible by the fact that all legal experts simultaneously agreed *not to* create a supranational governance unit for the field, thereby depriving that new Court from the capacity to weigh upon, let alone monopolize, the definition of the dominant forms of capital and of authority in the field. This renouncement to establish a supranational level of professional regulation is integral to the shaping of this emerging field of international law as a « weak field ».

Interestingly, while the tone of the committee's discussions was generally cordial and dispassionate, it would suddenly turn controversial as soon as its members would tackle the issue of *who* the permanent officials of this new permanent institution (judges, litigants, etc...) would have to be and *what* kind of rules and incompatibilities they would have to respect: in other words, when the debates dealt with the issue of professional regulation (recruitment procedures, legal credentials, rights to practice, regulatory bodies, etc.), the committee would encounter particular difficulties up to a point that I was putting in danger the very possibility to reach a deal. As this section shows, this obstacle would only be circumvented by avoiding to build any supranational form of professional governance in this emerging field of international law.

It must be said that the most zealous proponents of the World Court had initially hoped for the formation of self-ruled supranational bench⁶⁴. In his proposal of statute sent to the ACJ, Clovis Bevilacqua, the legal adviser of the Brazilian government, had made such a daring suggestion: judges, he suggested, would have to be selected through a *supranational* recruitment made by the court itself. "No other electoral body –he added hopefully- should be more competent, no other could inspire greater confidence for this selection of capable men"⁶⁵. Another option, heralded by the Spanish representative, Rafael Altamira, was to ask for national *legal* authorities of various types –"the Supreme court, the Law faculties, and the Official or Royal (if any Academies of Law and moral and political science)"- to prepare a list of candidates among which each government would have to choose⁶⁶. However, these proposals were immediately dismissed by the representatives of the great powers who had no intention to relinquish the possibility to nominate judges. Bevilacqua's suggestion was not even considered and Altamira's proposal caused the irony of the British judge Lord Phillimore who said that he "respected M. Altamira's view, but he could not forget that Spain was the land of Don Quixote"... sparking a bitter exchange between the two lawyers⁶⁷! When it became clear that there would be no self-governed and no self-recruited bench, the discussion moved on to *who* the international judge would have to be. While the members of the Advisory committee had agreed in very general terms that the judge would have to be a « legal professional », it was still not clear what this precisely entailed : what sort of professional profile did the candidates need to have ? What sort of incompatibilities would the judge have to respect while in office ?

i) Blurring Professional Settlements

The first issue that came to the table was that of the professional prerequisites that would be required to become an international judge. There was some hope, particularly on the British part, that -as the ACJ was moving toward a more 'authentic' court- the requirements would include more experience on the

⁶⁴ Hans Wehberg, *The Ideal of an International Court of Justice*, New York, Carnegie Endowment, 1918.

⁶⁵ Clovis Bevilacqua quoted in *The Ideal of an International Court of Justice*, op. cit., p. 23.

⁶⁶ Rafael Altamira, *Proceedings*, op. cit., p. 158.

⁶⁷ Lord Phillimore, *Proceedings*, op. cit., p. 125.

bench⁶⁸. Lord Phillimore quite bluntly stated his preferences on the subject-matter : « good judges are required –not merely jurisconsults. A good jurisconsult is not necessarily a good judge. A judge must possess the qualities of loyalty, high moral character, open-mindedness, courage and patience »⁶⁹. This could « only be found among persons trained in law, seasoned by experience at the bar, and, if possible, by experience upon the bench in their respective countries »⁷⁰. As the personal legal adviser of Elihu Root, James Brown Scott, recalls: « English-speaking members (...) did not look with favor upon the appointment of persons versed only in international law », adding that « no question could be more important; none was discussed at greater length by the committee » recalls James Brown Scott.⁷¹ Expectedly, this immediately ignited a bitter dispute within the committee that even leaked into the press. *The New York Times* mentioned that « one of the most difficult problems of the world court has now been reached. Each member outlined his opinion at length, but no agreement was arrived at between the ‘looser methods of continental law’ and the ‘Anglo-american view’ »⁷². Deeply different definitions of the judiciary function were in opposition between the “international magistrate judge” drawn from the bar, as defended by the common law countries, and the “international professor judge” or the “jurisconsult judge” promoted by civil law countries. It must be said that the stakes were not just symbolic. Choosing one professional model for the international judicial office implied to privilege one national way of law over the others. This was not a trivial circumstance, considering that these models of law corresponded to historically-rooted and highly idiosyncratic national legal fields. Unsurprisingly, it became soon clear that none of the parties was ready to give up on an issue that involved national and professional interests. As a result, the wisemen renounced defining the professional requirements in precise terms. While there would be a World Court, there would be no corresponding world-wide profession for that institution and all national species of legal professionals would be accepted. It all occurs as if the price to pay for the creation of an World Court was to forego a set of unified rules for the recruitment of its judges and lawyers, and so it fell to each one of the national governments to choose the profile – politician, civil servant, magistrate or professor – the best placed to fulfill the international judicial office. In substance, this failure to build a common judicial standard meant that States *mutually recognized* each others’ ways of law and that there would be as many breeding grounds and profiles of judges as they were members at the Permanent court⁷³. Absent a supranational profession with selection and regulatory powers, all national definitions would therefore be mutually accepted, and the international lawyer and judge could basically be ‘anyone’, whether professor-jurisconsult, magistrate, business lawyer, politician of the law or jurist-diplomat, who had been recognized and certified as such *nationally*.

ii) *Judges as Notables of International Affairs*

This lack of supranational professional standards would also be found in the imprecision that reigned on the rules of incompatibility that the new international judges would have to respect. All committee members pledged an equal commitment for securing judicial independence, particularly now that they

⁶⁸ Ole Spiermann, “Who Attempts Too Much Does Nothing Well...”, *art. cit.*

⁶⁹ Lord Phillimore, *Proceedings, op. cit.*, p. 105.

⁷⁰ Lord Phillimore quoted in James Brown Scott, *Project for a Permanent court..., op. cit.*, p. 52.

⁷¹ *Ibid.*, p. 51.

⁷² “Discuss basic law of League Court”, *New York Times*, 3 July 1920.

⁷³ Interestingly, the issue briefly re-emerged two years later, when the newly-established World Court had to define who would be entitled to plead before the court. The judges called upon to decide on this issue again refused to engage in setting criteria or any form of supranational regulation over the statute of lawyer: « the difficulty to establish rules can not be overcome. In this context, the committee has decided to suppress any rule constraining the right to plead before the Court: any person that has been designated by a State to represent it will have to be admitted », Lord Finlay, in *Préparation du Règlement de la Cour. Procès verbaux des séances de la session préliminaire de la Cour (30 janvier-24 mars 1922)*, *op. cit.*, p. 78-79.

had drawn such a dividing line between (legal) adjudication and (political) arbitration⁷⁴. Yet, when it came to define from which occupation would have to be declared incompatible with the judicial office, there was little agreement. The special advisor of Elihu Root, James Brown Scott, recalls that, “while the goal (independence) was clear and within the view of every member; the means of attaining it disclosed much difference of opinion”⁷⁵. Interestingly, the debate emerged incidentally in the middle of an apparently unproblematic discussion over the yearly calendar for the court's ordinary sessions. When the Rapporteur of the committee, Geouffre de Lapradelle, suggested that the Court would have to meet every year from the 15th June to the 15th October, he argued that: as « the national life of the various countries was less active » during this period, this calendar would not « deprive their respective countries entirely of their service »⁷⁶. Implicitly, the French law professor was admitting that the international judicial office would be complemented by national positions. When Japanese member Adatci reacted saying that he « thought that the judges were to resign from their national occupations in order to internationalize themselves, to ‘deify’ themselves », the Italian member reacted with irony stating that « it would not be easy to find persons prepared to denationalize themselves or to ‘deify themselves’ »... Eventually, the opinion formulated by the British member, Lord Phillimore, that the judge’s « native country should not be entirely deprived of his services in so far as his international work allowed him leisure to be of service to his country » would be easily adopted as the commission’s view on the matter.

This resulted in a very loose conception of judges’ incompatibilities with regard to their simultaneous commitment in adjacent fields of international affairs such as diplomacy, academia, national judiciary or even politics: M. de Lapradelle successfully defended the idea that “a great judge or a great professor (when international judge) must be allowed to continue in his present functions: no incompatibility exists in these cases. Similarly an eminent member of Parliament may retain his legislative function”. “Altogether unclear”⁷⁷, the final article of the Statute which declared incompatible positions “which belong to the political direction, national or international, of states” would be actually be watered down by the Court itself when it would eventually start operating. In the first case of incompatibility brought to its attention, that of Spanish senator and international judge Rafael Altamira⁷⁸, the Court confirmed the very lenient approach, stating that « as long as the judge is independent from his government, there is no incompatibility » with political positions such as that of senator⁷⁹. In other words, it was agreed that the best and the brightest that the World Court would need to attract in order for it to be an authoritative institution were precisely those who were engaged in their home countries in a variety of political and professional occupations related to the handling of international affairs (teaching, consulting, lawyering, advising, etc...). As a result, the specific model of professional excellency and legitimacy that emerged from the drafting of the Statute would ground legal worth and professional authority not so much on exteriority or independence from political affairs, as national judges would usually have it, but rather that of a *notable of international affairs* capable of intervening simultaneously in the many and different venues of international law, from

⁷⁴ The idea that the arbitrator would have more authority by being exterior/independent to the realm of international political affairs was profoundly stranger to the participants to the first The Hague conference. The contrary was actually true as the arbitrators’ mission was considered to be fully part of the diplomatic work and for that reason it was expected that they be *at the same time* ministers, ambassadors, or legal advisers of the ministry, etc...

⁷⁵ James Brown Scott, Project for a Permanent Court, *op. cit.*, p. 51-52.

⁷⁶ All the following quotations are taken the 8th meeting of the ACJ that took place on June 24th 1920, in *Proceedings, op. cit.*, p. 186-192.

⁷⁷ Antonio Sanchez de Bustamante, *The World Court, op. cit.*, p. 116.

⁷⁸ Cour permanente de justice internationale, “Décisions administratives”, in *Premier rapport annuel (1er janvier 1922-15 juin 1925)*, Leyden, Sijthoff, 1925, pp. 233-267, p. 239.

⁷⁹ Loder, “Troisième séance du 4 février 1922, in Cour Permanente de Justice Internationale, *Actes et documents relatifs à l’organisation de la Cour. Préparation du Règlement de la Cour. Procès verbaux des séances de la session préliminaire de la Cour (30 janvier-24 mars 1922)*, Coll. Publications de la CPIJ, Série D, Leyden, Sijthoff, 1922, p. 11.

national to international settings, and from learned circles to political arenas or bureaucratic settings⁸⁰. In sharp contrast with the national judge whose independence is secured by multiple rules of incompatibilities, the emerging figure of the ‘international judge’ would be first of all a hybrid figure: both a scientist of and an active participant to international politics; both a seasoned practitioner of international relations praised by his or her peers for his or her *influence* and *wisdom* and an expert listened to by the major players of international affairs for his or her *expertise* and *scholarship*.

On the whole, the new international judiciary was recognized an autonomous province, but under the strict condition that the corresponding field of international law would remain under-regulated and deeply entangled with adjacent fields. Here is not the place to fully research and discuss how this social and professional pattern that emerged in 1921 has had channelling and delimiting effects and how this contingent historical arrangement became constitutive for the field of international law and for other transnational expert fields. Suffice it to say that the more recent ‘proliferation’ of international courts⁸¹ and the diversification of international law’s areas of intervention (trade, environment, human rights, etc...) did not alter the initial constellation. To be sure, the legal requirements for international judicial offices have progressively increased⁸² and one can observe a recent push for mainstreaming national practices of nomination by setting higher professional standards for judges (Burgh House principles, Venice Commission resolutions, etc...) ⁸³. However, the role of supranational bodies has stayed remarkably weak in comparison to the role of national government in choosing their own “judges” ⁸⁴, thereby depriving international courts from a control over the field’s reproduction⁸⁵. First indicators show that a similar weak structure can be identified for other transnational expert fields, starting with that of international economics where the domination of the mic-mac-metrics (micro-economics, macro-economics and econometrics)⁸⁶ or that of central banking with the domination of a monetarist theory⁸⁷ comes along with the perennial existence of a variety of breeding grounds, professional profiles, etc...

⁸⁰ On this, Guillaume Sacriste et Antoine Vauchez, “The Force of International Law...”, art. cit. And Martti Koskienniemi, “Between Commitment and Cynicism: Outline for a Theory of International Law as Practice”, in *Collection of Essays by Legal Advisers of States, Legal Advisers of International Organizations and Practitioners in the Field of International Law*, New, United Nations; Offices of Legal Affairs, 1999, p. 495–523.

⁸¹ For an overview of the transformations and diversification of international courts in the post-WWII period, see Karen Alter, “The Evolving International Judiciary”, *Annual Review of Law and Social Sciences*, 2011, p. 387-415.

⁸² See, in this regard, the interesting case of the European Court of Justice as described in Antonin Cohen, “Ten majestic figures in long amaranth robes”. The Formation of the Court of Justice of the European Communities”, *Revue française de science politique*, 60 (2), 2010, p. 23-41.

⁸³ On this evolution, see in an ever growing literature: Jiri Malenovski, « L’indépendance des juges internationaux », *Recueil des cours de La Haye*, vol. 349, 2010, pp. 9-276, in particular Chapter 5 on the nomination process ; Philippe Sands and R. Mackenzie, “The Burgh House Principles on the Independence of the International Judiciary”, *LPICT*, 4, 2005, pp. 247-260; Ch. Brown, “The Evolution and Application of Rules Concerning Independence of the International Judiciary”, *LPICT*, 2, 2003.

⁸⁴ On the variety of profiles of international judges, see Cesare Romano, Daniel Terris, Stephen Schwebel, Joanne Myers, *The International Judge: An Introduction to the Men and Women Who Decide the World's Cases*, Brandeis, 2007.

⁸⁵ This is even the case for what is arguably today the most ‘advanced’ international court, namely the European Court of Justice: Antoine Vauchez, “Keeping the Dream Alive - The European Court of Justice and the Transnational Fabric of Integrationist Jurisprudence”, *European Political Science Review*, vol. 5, n°1, 2012, p. 51-71.

⁸⁶ Marion Fourcade, « The Construction of a Global Profession. The Transnationalization of Economics », *American Journal of Sociology*, vol. 112, 2006, p. 145-194.

⁸⁷ Frédéric Lebaron « Central bankers in the contemporary global field of power », art. cit.

Conclusion. Transnational Expert Fields as Weak Fields

Transnational expert fields do not hold by themselves through a sort of endogeneous and self-referential logics. While they may seem similar to their national counterparts, a closer look to their genesis shows that they were born as embedded in deep-rooted national fields of power that have kept a strong hold on the socialization and the recruitment of international experts through primary socialization, educational breeding grounds, pathways to professional excellency, career paths to international positions, etc... As they keep an interstitial position in-between deep-seated national settings, transnational expert fields are particularly propitious arena for the building of *common* cognitive and normative frames of government. My general hypothesis is that such weakness is what renders transnational expert fields potentially salient when it comes to shaping international government's cognitive and normative frames. First of all, these permeable boundaries with the many neighboring fields of politics, diplomacy, advocacy, etc. constitute a favorable context for multi-positional entrepreneurs. In such settings where the border between science and practice are largely blurred, anyone can be at one and the same time a scholar forging new theories of international relations *and* a practitioner directly testing them in various policy domains. The most skilled participants can successively wear the mantle of scholarship, diplomacy, foreign affairs, advocacy and judicial practice. As they circulate across sectors and play on both parts of the academic and political fence, they are able to contribute to oft unnoticed forms of policy frames' alignment and synchronization across otherwise segmented, if not antagonistic, fields. Second, such loosely structured fields imply that these expert sites ("expert committees", "congresses", "journals", "learned societies", etc...) are substantially different from what they refer to at the national level where expert fields are oft deep-seated and well established. By many standards, their international counterparts are more akin to the first *Sociétés savantes* of the late 19th century, such as the *American Social Science Association* (1867) or the *International Law Institute* (1873), where ministers, statesmen, high civil servants, philanthropists, experts, academics would meet and mingle. As a result, they are at one and the same time an *academic arena* where renewed instruments of knowledge are built; a *crossroads* for exchanges and competitions among scholarly, advocacy, bureaucratic and political elites under the guise of discussing "current issues of international affairs"; and, last but not least, a *mobilization device* where a diverse set of law-endowed professionals gather to further the integrative capacity of the law in international affairs. Porous and overlapping with bureaucratic, economic, advocacy and political spaces, transnational expert fields eventually appear as essential sites of coordination and homogenization of commons frames of understanding the nature and future of international government. Just as in other complex and highly differentiated settings, such purported neutral *fora* located at the crossroads of otherwise distinct, if not antagonistic, sectors and groups are essential engines of the alignment of cognitive and normative frames of international government. Importantly however, this constitutive capacity of transnational expert fields is not unconditional: their in-betweenness is not automatically conducive to such cumulative pooling of resources. In other words, the "weak field" approach does not imply any sort of 'necessary' social effect ("strong" or "weak"). Its main added value ultimately lies in its empirical potential the fact that it redirects the researcher's gaze and empirical research towards the interstitial positioning of transnational expert fields and the specific type of "*effet de champ*" that their internal dynamics may actually stimulate.

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