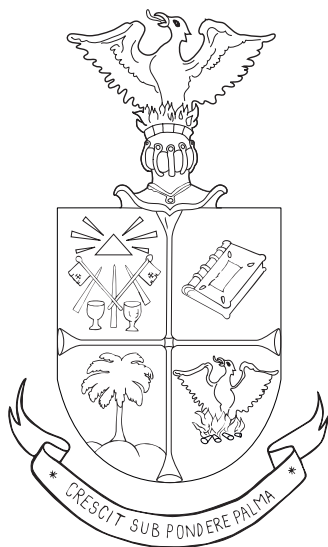


Karoli Mundus I.

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THE ROLE OF THE SCHOOL OF PUBLIC SERVICE (L'ÉCOLE DE BORDEAUX) IN THE FRENCH ADMINISTRATIVE LAW OF THE 20TH CENTURY

The school of public service (l'École du service public) is one of the most famous theories of French public law in the 20th century, the essence of which was that administrative law is nothing more than the law applied by the administration with regard to public service activities (*service public*). The concept of administrative law of a public service nature was at the crossroads of controversy for many decades.² Still, the notion of the school of public service itself remained quite flexible, having been left with several unresolved questions. I think the most important questions to be answered are who was the founder of the school, who were its followers, and what were its basic theories. The French administrative jurists and legal historians dealing with the improvement of administration have basically three directions regarding the establishment of the school. According to the first concept, Léon Duguit was the founder, a view excluded by the contradictions in Duguit's work exclude this. Finally, according to the third approach, Léon Duguit and Gaston Jèze are considered together to be the founders of the school of public service or school of Bordeaux. Although they agreed on some principles, they explained them in different ways. The followers of the school of public service were not unified regarding all questions, their concepts and methods of approach had great variety. In order to answer the questions to be clarified, I would first like to examine the circumstances of the establishment of the school of Bordeaux then to describe the main elements of the work of the jurists belonging to the school.

1. The establishment of the school of public service

Léon Duguit was an outstanding administrative jurist of the second half of the 19th century and the beginning of the 20th century who, by developing the theory of the legislation of public services, became the leading figure of this novel scientific area. The approach represented by him, namely that public service has a central role in

1 University Professor, Department of Civil Law and Roman Law

2 MAZERES, Jean-Arnaud: Duguit et Hauriou et la clé cachée, in: *Autour de Léon Duguit*. Colloque commémoratif du 150^e anniversaire de la naissance du doyen Léon Duguit Bordeaux, 29-30 mai 2009, (sous la direction de MELLERAY, Fabrice), Bruxelles 2011, 115-138.

administrative law, was the basic concept behind establishing the school. Since he was born in Bordeaux, he studied law there and was also a professor and dean of public law at the University of Bordeaux, the school he founded is also known as the school of Bordeaux (*école de Bordeaux*).³ For long time, the expressions 'the followers of Duguit', 'the members of the school of Bordeaux' and 'the theory of public service' were used as synonyms by the French jurisprudence. However, the famous administrative jurist called attention to the distinct contents of the three labels. According to him, *duguists* include authors subscribing to Duguit's concepts either in France or abroad. Contrary to this, according to the school of Bordeaux, the followers of Duguit are the authors who studied or taught in the faculty of law in Bordeaux (its headquarters is in Pey-Berland). The school of public service (*école du service public*) denotes the jurists agreeing with Gaston Jèze's famous phrase, namely that public service is the cornerstone of administrative law.⁴ Of the three interpretations, I consider only the division of *service public* theory to be decisive today, and although the theory had followers who had not studied or taught in Bordeaux, I can accept the denomination 'the members of the school of Bordeaux' regarding the theorists of the school of public service not working here, due to the historical traditions of science. In introducing the concept of *public service*, two jurists, Duguit and Jèze had vital roles, I think, so it is necessary to say a few words about their careers and works.⁵

Léon Duguit (1859-1928) was born into a wealthy and notable family in Bordeaux. Due to his extraordinary studies, he graduated as the top of the class in the Faculty of Law in Bordeaux. He had already worked as a lawyer when he received his doctorate. He succeeded in his first competition as early as in 1882 (at the age of 23), although he was the 6th in the hierarchy, and this helped him to get an appointment as university professor in the Faculty of Law in Caen. His first teaching obligation was on legal history. The years in Caen gave him the opportunity that, beyond jurisprudence, he could turn towards other illustrious representatives of social sciences. Together with Edmont Villey, they established the first meaningful journal of economic policy named „*Revue d'économie politique*” of which he was also the editorial secretary between 1888 and 1892. In 1886, he relocated from Caen to Bordeaux, where he was soon acknowledged by his colleagues and students. He travelled abroad a lot and was interested in exchanging views with his colleagues as well. As one lesson from his travels, he continuously encouraged sociology to be included in the curriculum of

3 KOI Gyula: *A közigazgatás-tudományi nézetek fejlődése. Külföldi hatások a magyar közigazgatási jog és közigazgatástan művelésében a kamerálisztika időszakától a Magyary-iskola koráig*, Budapest 2014, 260-261.

4 MELLERAY, Fabrice: *École de Bordeaux, école du service public et école duguiste. Proposition de distinction*, *Revue du droit public et de la science politique en France et à l'étranger*, 2001/6. 1887-1905.

5 BIGOT, Grégoire – LE YONCOURT, Tiphanie: *L'Administration française 2. Politique, droit et société 1870-1944.*, Paris 2014, 208-209.

faculties of law from 1890 onwards. In the following year, he established and directed a seminar on legal sociology, based on German patterns. Besides legal sociology, he supported teaching political economic science and constitutional law. His first paper in public law was published in 1896 in the *Revue du droit public*, and in the same year he was promoted to be on the jury in the competition trustee. This was a huge acknowledgement for a young (less than 40 years old) provincial university professor.⁶

Duguit went on to write a two-volume monograph on the state. The first part was published in 1901; the second part in 1903. In these two volumes, he introduced the basic principles of his concepts, which he later clarified and revised.⁷ In the 1910s, he published two volumes of international renown. The first was published in 1912 under the title “*Les transformations générales du droit privé depuis le Code Napoléon*”, showing the development of French civil law over the hundred years since the *Code civil* entered into force. In 1911, he began publishing his other monumental, five-volume work on constitutional law, entitled „*Traité de droit constitutionnel*”. Foreign jurists also became interested in his work, and major journals began to review his articles as well. He often spoke at foreign conferences and accepted invitations to be a guest lecturer (in Coïmra in 1910, and Buenos Aires in 1911). In addition to the faculty of law in Bordeaux, from 1907 to 1911 he also took part in the educational activities of the *École des hautes études sociales*. In addition to his university roles in public life, he was active in the life of the city and professional associations as well. He was also elected a member of the local city council (*conseil municipal*) in 1908, where he mainly dealt with matters relating to the administration of hospitals. At the outbreak of World War I, he also ran for parliament, but after not being elected he turned his back on politics. During the war, he served in the administration of military hospitals. He lost one of his sons in the Great War, which shattered him to an extraordinary degree. After the war, in 1919, he became the dean of the faculty of law in Bordeaux and continued to perform abroad, too.⁸ He gave lectures at the University of Colombia in 1920-1921, in Coïmra in 1923 and in Bucharest in 1925. He played an active role in the work of the faculty of law that opened in Cairo. Together with Hans Kelsen and Weyr, in 1926 he co-founded the international journal of legal theory entitled „*Revue internationale de théorie du droit*”. The following year he also took part in establishing the International Institution of Public Law (*Institut international de droit public*) chaired by Gaston Jèze. Duguit’s scientific work was part of a general trend at the end of the 19th century that aimed to renew jurisprudence

6 MILET, Marc: Duguit Léon, in: *Dictionnaire historique des juristes français XII^e – XX^e siècle* (sous la direction: Patrick ARABEYRE, Jean-Louis HALPÉRIN, Jacques KRYNEN), Paris 2007, 358-361.

7 MELLERAY, Fabrice: Léon Duguit. L’État détrôné, in: *Le renouveau de la doctrine française* (Études réunies par HAKIM, Nader et MELLERAY, Fabrice), Paris 2009, 215-262.

8 PACTEAU, Bernard: Léon Duguit à Bordeaux, un doyen dans sa ville, in: *Thémis dans la cité. Contribution à l’histoire contemporaine des facultés de droit et des juristes* (Études réunies par HAKIM, Nader et MALHERBE, Marc), Bordeaux 2009, 87-105.

and to replace the legal dogmatic tendency, which was mainly based on textual exegesis. This was primarily manifested in adapting the application of new results and methods in social science to the features of jurisprudence. His theory of the state is characterised by his opposition to German doctrines. He did not consider the state to be a legal person endowed with sovereignty, as he did not see the essence of the difference between individuals and the state governing them in the nature of their legal personalities but in their functionally different roles. Duguit saw positive legal norms as the embodiment of objective law, corresponding to social solidarity and interdependence.⁹

At the centre of his thinking was a question that can still be considered relevant today: how can the state be limited by law? As early as 1913, in his work on the transformations of public law (*„Les transformations du droit public”*) he formulated his school's main thesis, namely that *„the concept of public service has become a basic concept of modern public law.”*¹⁰ It was then that he first realised that *service public* is an essential element of the state structure. Duguit was not the creator of the concept of public service, as it had already been created by administrative judicial practice in the previous years. Although Duguit used the term *service public*, he still considered it part of his political theory. In his case, public service / public services is not however a cornerstone of administrative law that would thus be distinguishable from other independent branches of law, such as civil law.¹¹ In his textbook *„Traité de droit constitutionnel II”*, the third edition of which was published in 1928, Duguit defined the concept of *service public* as follows: *„Any action, the protection, regulation and control of which must be carried out by the government, since the provision of such action is essential for the realisation and development of social interdependence and, as having such nature, cannot be fully realised otherwise than by the intercession of the governing force alone.”*¹² Duguit considered public services to be so fundamental to the community that he thought it impossible to stop them, even for a short time. As he considered continuity to be an essential element of public service, he thought strikes by civil servants (*fonctionnaires*) were beyond possibility, too. Based on his definition, through public service, the state and governors have the duty to use the state monopoly of violence to organise, regulate and control its implementation and to sanction those who obstruct its operation. The power of governors, he said, can only be directed to

9 RAYNAUD, Philippe: Léon Duguit et le droit naturel, *Revue d'histoire des facultés de droit et de la science juridique* 4 (1987), 169-180.

10 DUGUIT, Léon: *Les transformations du droit public*, Paris 1913, XIX. és 52-58. *„la notion de service public devient la notion fondamentale du droit public moderne”.*

11 MELLERAY, Fabrice: Léon Duguit. L'État détrôné, in: *Le renouveau de la doctrine française* (Études réunies par HAKIM, Nader et MELLERAY, Fabrice), Paris 2009, 243.

12 DUGUIT, Léon: *Traité de droit constitutionnel* 2, Paris 1928, 61. *„toute activité dont l'accomplissement doit être assuré, réglé et contrôlé par le gouvernement, parce que l'accomplissement de cette activité est indispensable à la réalisation et au développement de l'interdépendance sociale, et qu'elle est de telle nature qu'elle ne peut être réalisée complètement que par l'intervention de la force gouvernante”*

the performing public service; all other actions that have a different purpose than public service are worthless. According to him, public service is both the basis and the limit of government power („*Le service public est le fondement et la limite du pouvoir de gouvernamentale.*”).¹³Duguit has not yet elaborated the list of public services in detail, as this would have been alien to his theory that governors (*gouvernants*) do not create rights, they only establish it. Thus, for him, the government has no discretionary power to establish public services, either. For Duguit, the range of public services is constantly growing simultaneously with societal development. At the same time, the conditions of public services are set by law; new ones can only be created by objective law and can only be administered within the framework of social interdependence (*interdépendence sociale*).¹⁴

However, the theory of public service itself was only made the basis of administrative law by Gaston Jèze in 1914 in his 2nd edition of his textbook „*Principes généraux du droit administratif*” (the first version of which did not yet include it). This opened a new era in the scientific history of French administrative law.¹⁵

A Toulouse-born lawyer, Gaston Jèze (1869-1953) became one of the most prominent representatives of the theory of public service law in Bordeaux.¹⁶ He continued his studies in his hometown as well, obtaining his doctorate in 1892 by a dissertation in civil law and Roman law, in accordance with the customs of the age.¹⁷ Three years later, because of the outstanding achievement in the administrative competition, he was appointed draftsman for the prefecture of Seine county, where¹⁸ his interest soon turned to educational and scientific work. He failed the professorial competition (*agrégation*) in both 1897 and 1899, succeeding only in the round of tenders announced in 1901, this time finishing second in the rankings. Already, after his first unsuccessful competition, he had published his first major university paper in 1898, entitled „*Éléments de la science des finances*” which he wrote together with his friend Max Boucard, the lecturer (*maître des requêtes*) at the *Conseil d'État*. Jèze was first appointed to the University of Lille, where from 1905 he became a professor of administrative law. From then on, he researched and taught in two areas, namely administrative law and financial law. His work in financial law made a significant

13 DUGUIT, 62.

14 MELLERAY, Fabrice: Léon Duguit. L'État détrôné, in: *Le renouveau de la doctrine française* (Études réunies par HAKIM, Nader et MELLERAY, Fabrice), Paris 2009, 243-247.

15 JÈZE, Gaston: *Principes généraux du droit administratif*, Paris 1914², X.

16 KONDYLIS, Vassilios: La conception de la fonction publique dans l'oeuvre de Gaston Jèze, *Revue d'histoire des facultés de droit et de la science juridique* 12 (1990), 43-54.; VENEZIA, Jean-Claude: Gaston Jèze et le service public, *Revue d'histoire des facultés de droit et de la science juridique* 12 (1990), 93-103.

17 MILET, Marc: Jèze Gaston, in: *Dictionnaire historique des juristes français XII^e – XX^e siècle* (sous la direction: Patrick ARABEYRE, Jean-Louis HALPÉRIN, Jacques KRYNEN), Paris 2007, 554-557.

18 PACTEAU, Bernard: *Le Conseil d'État et la fondation de la justice administrative française au XIX^e siècle*, Paris 2003, 241.

contribution to making public finance law (*Finances publiques*) an independent discipline in France.¹⁹ As early as 1904, he published his work entitled „*Principles généraux de droit administratif*”, containing the principles of administrative law. Thanks to his prestige, he was invited to the faculty of law in Paris in 1909 and Georg Jellinek asked him to write a volume on French administrative law.²⁰

The completed volume was published in 1913 in German.²¹ At the turn of the century, several prestigious journals invited him to be a member of their editorial board. Founded in 1894, the journal of public law and political science called „*Revue de droit public et de la science politique*” entrusted him with the task of editor-in-chief in 1905. He was honoured after creating the first major journal in financial law, entitled „*Revue de science de la législation financières*”, in 1903. Another recognition of his work in financial law was that in 1908 he became editor-in-chief of the journal „*Revue pratique du contentieux et des impôts*”, which mainly analysed financial court cases and dealt with tax issues. He also gained considerable merit in processing the judicial practice of the jurisprudence in 1904, in the case collection entitled „*Année administrative*” that he co-created with Maurice Hauriou. As Duguit’s successor, he became the principal representative of the theory of public services (*service publique*).²² His examination of the concept of competence and that of the administrative contract also played a central role in his works.²³ Alongside Léon Duguit, Gaston Jèze is considered the most respected French public jurist.²⁴

Gaston Jèze looked at the older man’s work with admiration and emphasised his prominent role in public jurisprudence. He considered Duguit a school founder but at the same time opposed some of his views. Jèze defended his master against Hauriou’s attacks. He considered it Duguit’s greatest virtue that he made the concept of public service become a method for solving all the problems of modern administrative law in the clearest way. Jèze became a believer of the *service public* theory but he also advocated Duguit’s method of research, which he considered scientific, objective and realistic. The difference between Duguit and Jèze is apparent primarily in their conception

19 MOLINIER, Joël: Gaston Jèze à la théorie des finances publiques, *Revue d’histoire des facultés de droit et de la science juridique* 12 (1990), 55-70.

20 KOI Gyula: *A közigazgatás-tudományi nézetek fejlődése. Külföldi hatások a magyar közigazgatási jog és közigazgatástan művelésében a kamaralisztika időszakától a Magyar-iskola koráig*, Budapest 2014, 261-262.

21 JÈZE, Gaston: *Das Verwaltungsrecht der Französischen Republik*, Tübingen 1913.

22 FRIER, Pierre-Laurent: La théorie de la nécessité dans l’oeuvre de Gaston Jèze, *Revue d’histoire des facultés de droit et de la science juridique* 12 (1990), 29-32.

23 TOUJAS, Dominique: La notion de compétence chez Gaston Jèze, *Revue d’histoire des facultés de droit et de la science juridique* 12 (1990), 87-91.; SALON, Georges: Gaston Jèze et la théorie générale des contrats administratifs, *Revue d’histoire des facultés de droit et de la science juridique* 12 (1990), 71-86.

24 PACTEAU, Bernard: *Le Conseil d’État et la fondation de la justice administrative française au XIX^e siècle*, Paris 2003, 241.

of law: Jèze rejected Duguit's natural law-featured view, in that that law had already existed before the state was formed and the state did nothing but consolidate it. Their perceptions of the scientific and social role of university lecturers also clashed. While, according to Duguit, a jurist should be the conscience of society as well, for Jèze, scientific neutrality should come to the fore when studying law. Jèze's vision was that his master mixed politics and legal solutions. Over time, the distance between Jèze's and Duguit's conceptions widened further, although Jèze continued to apply his master's positivist sociological method and still considered himself a devotee of the school of Bordeaux. Although Duguit made the notion of *service public* well-known, it only became a general explanatory concept of all issues of administrative law in the course of Jèze's work.²⁵ In Jèze's view, „*individually and exclusively, only such a need can be regarded as a public service about which the governed have decided – in the public interest (intérêt général), at a given time and in a given country – to gratify it by using public services*”.²⁶ Thus, from the view point of the nature of public service, only the will of the governed should be taken into account. If this is not clear, the elements that may indicate the existence of this need should be reconsidered. In this respect, in contrast to Duguit's objective theory, Jèze placed a subjective element at the centre of his theory.²⁷

Based on the above, it can be concluded that the founder of the public service theory is not Duguit alone but that the Bordeaux school was established together with his pupil, Jèze, instead.²⁸

2. Representatives of the teachings of the school of public service

Thanks to the work of Duguit and Jèze, several prominent representatives of 20th century French administrative law saw themselves as followers of the school of Bordeaux. These include Louis Rolland, Roger Bonnard, Marc Réglade, Roger Latournerie and André de Laubadère.²⁹

Louis Rolland (1877-1957) pursued his legal studies in Paris. He wrote two doctoral dissertations (1900-1901), one on the issue of postal correspondence in international law and the other on the secrets of postal employees. After that he became a lecturer, first in Paris (1904) and then in Algiers (1905). Following his successful competition,

25 CHEVALLIER, Jacques: *Le service public*, Paris 2008, 39.

26 JÈZE, Gaston: *Principes généraux du droit administratif*, Paris 1914², 16-17. „*Sont uniquement, exclusivement, services publics les besoins d'intérêt général que les gouvernants, dans un pays donné, à une époque donnée, ont décidé de satisfaire par le procédé du service public*”.

27 VENEZIA, Jean-Claude: Gaston Jèze et le service public, *Revue d'histoire des facultés de droit et de la science juridique* 12 (1990), 101-102.

28 PAIVA DE ALMEIDA, Domingos: *L'école du service public*, thèse Université Paris I, Paris 2008.

29 BURDEAU, François: *Histoire du droit administratif (de la Révolution au début des années 1970)*, Paris 1995, 346-348.

in 1906 he was appointed professor of administrative law at the Faculty of Law in Nancy, from where in 1918 he moved to Paris. He twice served as a Member of Parliament, thus during the French Third Republic he also became a member of the *Chambres des députés* between 1928 and 1936. At the heart of his administrative legal work it is the new and original concept of public service that he developed. He did not study in Bordeaux nor did he teach there, but after completing his dissertations on the post office he still joined the school of public service. In his textbook (*Précis de droit administratif*) he explained that administrative law is also the law of public services, but in his theories he did not completely join the main representative of the theory, Duguit.³⁰ Rolland owes the connection of his name with the school of public service in administrative law to three main factors. First, he created a *service public* concept which was novel, compared to Duguit's.³¹ According to him, administrative law is essentially the law of public services („*Le droit administratif est essentiellement le droit des services publics*”), but only in essence and not exclusively. With this subtle distinction, the author perceived that the role of the state could not be limited to the organization of public services only. Second, Rolland not only considers the state to be the custodian of all public services but also acknowledges its public service powers in the industrial and commercial fields. Its third and best-known merit is the formulation of the principles of public services (also called Rolland's Laws). Among these items, he states that the most basic principles of public service are continuity (*continuité*), equality (*égalité*) and mutability (*mutabilité*). Rolland's Laws are not rules of positive law but a set of principles, filtered and systematised from the study of judicial practice. There were initially only two Rolland's Laws, and then the third was joined by the fourth, which referred to the relationship between public service and the public legal person. The significance of this also had an impact on the right of civil servants to strike. Between the two world wars, his textbook on colonial legislation („*Précis de législation coloniale*”), co-written with Pierre Lampué and first published in 1931, received great professional success and ran to several editions (1936, 1940).³²

Roger Bonnard (1878-1944) studied law in Bordeaux, graduating in 1899. In 1903, under the guidance of Léon Duguit, he defended his doctorate written on disciplinary sanctions for the misconduct of civil servants („*De la répression disciplinaire des fautes commises par les fonctionnaires publics*”). Following this, he became a lecturer

30 ROLLAND LOUIS: *Précis de droit administratif*, Paris 1934⁵, 14. „*Le droit administratif est essentiellement le droit des services publics. On doit donc essayer d'abord de s'entendre sur cette notion*”.

31 ROLLAND LOUIS: *Cours de droit administratif*, Paris 1944, 209. « *le service public est une entreprise ou une institution d'intérêt général placée sous la haute direction des gouvernants, destinée à donner satisfaction à des besoins collectifs du public auxquels, d'après les gouvernants, à un moment donné, les initiatives privées ne sauraient satisfaire d'une manière suffisante et soumis, pour une part tout au moins, à un régime juridique spécial* ».

32 HALPÉRIN, Jean-Louis: Rolland Louis, in: *Dictionnaire historique des juristes français XII^e – XX^e siècle* (sous la direction: Patrick ARABEYRE, Jean-Louis HALPÉRIN, Jacques KRYNEN), Paris 2007, 884-885.

at the faculty of law in Rennes, and after the professorial competition in public law he first became a professor of constitutional law at the faculty of law in Rennes, then in 1922 he was appointed to Bordeaux as the successor to his master. In addition to Gaston Jèze, he became co-editor-in-chief of the magazine „*Revue de droit public*” from 1935, and from 1942 to 1944 he directed the editing work alone. From 1939 he co-edited the international journal „*Revue internationale de la théorie du droit*” on legal theory together with Kelsen and Giacometti. He also took an active role in university administration, first as dean of the Faculty of Law in Bordeaux, then after 1940 in the Higher Educational Advisory Committee and from 1938 in the Supreme Council for Public Education. He was also elected to the county council of Gironde in 1940. He crowned his university career in 1942 as the chairman of the public law competition for law schools (*président du concours d'agrégation des facultés de droit*).³³ He continued his scientific work in the fields of constitutional law, administrative law and comparative law. In each of these disciplines, he passed on an imposing legal legacy to posterity. His textbook on administrative law was first published in 1926 („*Précis élémentaires de droit administratif*”). His similarly classic public law work, entitled „*Précis élémentaire de droit public*” was published in 1925. In his work he gained merit by developing the theory of administrative subjective law.³⁴

Marc Réglade (1895-1949), who was also born in Bordeaux and continued some of his high school studies there before completing them in Paris, can be considered Duguit's student as well as department successor. He obtained his law degree (*licence en droit*) in 1916, then gained a doctorate in politics and economics in 1919 and in jurisprudence in 1920 in Bordeaux. As a student of Léon Duguit, he specialised in the field of public law, so he taught subjects relating to the *droit public* and then continued his university career in Bordeaux, even after his successful university professorial competition (*agrégation*) in 1925. He taught constitutional law for a year at the university in Aix-Marseille in 1926 and then he was appointed a university professor in Bordeaux in November 1927. After Duguit's death, he took over his master's department in 1929. He was also discharged from military service because of his fragile state of health. As an active university professor, he died at the age of 54 after 23 years of teaching in Bordeaux. Despite his relatively short university career, as a student of Duguit he was particularly active in major scientific research, including the fields of constitutional law, international law and the philosophy of law. In his scientific *oeuvre*, including more than thirty works, his doctoral dissertation

33 BIGOT, Grégoire: Roger Bonnard, in: *Dictionnaire historique des juristes français XII^e – XX^e siècle* (sous la direction: Patrick ARABEYRE, Jean-Louis HALPÉRIN, Jacques KRYNEN), Paris 2007, 137-138.

34 PACTEAU, Bernard: *Le Conseil d'État et la fondation de la justice administrative française au XIX^e siècle*, Paris 2003, 242.; NOYER, Bernard: La doctrine du doyen Bonnard sur le droit naturel, , *Revue d'histoire des facultés de droit et de la culture juridique du monde des juristes et du livre juridique* 4 (1987), 181-215.

on customary law in national public law entitled „*La coutume en droit public interne*” (1919) and his work on social values and legal concepts consisting of norms and legal solutions, entitled „*Valeur sociale et concepts juridique: normes et technique*” (1950) have special significance.³⁵

In the 1940s, 1950s and 1960s, several administrative jurists perceived the idea of „*service public*” as being pushed into the background in the practice of the French administrative courts. Bonnard, who worked in Bordeaux, expressed concern at the end of his life about the pragmatic judicial interpretation of public services, which he clearly considered a sign of decline.³⁶

Roger Latournerie (1894-1977) served as a councillor and university lecturer as well. He is also linked to the fact that, as the government commissioner (*commissaire au gouvernement*) of the *Conseil d'État*, it was already recognised in the practice of the Council of State in the 1930s that there can be an intermediate category, between purely public services and purely private services, which is nothing other than private services of general interest.³⁷ These private service providers could be endowed with authority of public right by the legislature, subject to certain conditions such as eminent domain. Latournerie was also involved in the drafting of this important decision.³⁸ However, in its decisions of 1954-56, the *Conseil d'État* and the *Tribunal des conflits* again gave place to the theory of public services in its decrees. Although the Council of State acknowledged that the theory of *service public* was no longer the cornerstone of administrative law, it provides an essential element of many basic concepts of this branch of law. Such basic concepts of administrative law are public servant, public works and administrative contract. Before the eyes of the administrative courts, the doctrine of public services, reborn from the ashes, was called a legal Lazarus by President Latournerie.³⁹ In his 1960 study entitled „*Sur un Lazare juridique*” published in the official journal *Conseil d'État*, Latournerie re-emphasized the concept of public services, one that had been ignored by many jurists. As a result of his analysis, he still considered the concept of the three-element *service public* to be a coherent unit. In his view, the three elements of this remain: public interest, dependence on public power and its specific legal regulatory regime.⁴⁰ Subsequently, the new content of public services was again determined by the judicial custom. As a result, from then on, every activity of general interest that is under the control of the administration entrusted with public authority falls within the scope of it. The

35 MALHERBE, Marc: *La Faculté de Droit de Bordeaux (1870-1970)*, Bordeaux 1996, 402-403.

36 BURDEAU, François: *Histoire du droit administratif (de la Révolution au début des années 1970)*, Paris 1995, 473.

37 BURDEAU, 419.

38 CE, 20 décembre 1935.

39 LATOURNERIE, Roger: Sur un Lazare juridique; bulletin de santé de la notion de service public; agonie, convalescence ou jouvence, *Conseil d'État. Études et documents* 14, (1960), 61-159.

40 BURDEAU, 476-477.

existence of the public authority was interpreted flexibly, so a social service carried out by private individuals in the public interest, in which the controlling institution has no public authority, is also a public service. For example, the new extended public services include the operation of urban theatres, the maintenance of urban casinos, the sports competitions organised by sports federations, or even the operation of the national lottery. With this broad interpretation, the concept came under fire again.

André de Laubadère (1910-1981), who also made the doctrines of *service public* at the heart of his work, was born in 1910 in Paris. He continued his secondary school studies in Toulouse, where he graduated in 1929. However, he completed his university studies in literature and law in Bordeaux. He received his law degree in 1930 and his doctorate in 1935. In the same year, he finished first in the university teacher competition. He was then assigned to Bordeaux as a professor, where he taught constitutional law from 1935 to 1939. After his years in Bordeaux, he was a university professor in Grenoble, Montpellier and Rabat, Morocco. It was not until 1951 that he returned to France, this time to Paris. He completed his university career as a university professor at Paris II. Among his works, the most important ones are his publication called „*Les réformes des pouvoirs publics au Maroc*” (1944), dealing with the reforms of public law in Morocco, and the handbook on the basic institutions of the French administrative law entitled „*Traité élémentaire de droit administratif français*” (1953). The university curriculum related to public services was also part of his intellectual legacy. One work was made by his students with his permission on the basis of his lectures in 1959-1960 (*Cours de grands services publics et entreprises nationales: rédigé d'après les notes et avec l'autorisation de M. André de Laubadère. 1959-1960*) (1960). He was the jurist of the crisis period of administrative law. In his view, by the 1950s, not only the notion of *service public* but also the foundations of administrative law, its scientific systematization, administrative jurisprudence and public liability were in crisis. Laubadère was also a critic of the concept of *service public* represented by Roger Latournerie. Specifically, with regard to the legal system featured in public services, he rightly pointed out that this was not a consequence of the nature of public services but the manifestation of the fact that public authorities wished to endow the given organisation or activity with it.⁴¹ Despite his criticisms, he remained the follower of the school of public service. He stated that the concept of public services should not be either a cornerstone of administrative law or the limit of jurisdiction of the administrative judge. In his view, there is no exclusive and dominant idea in administrative law but it nevertheless remained a fundamental element of the law of administration.⁴²

With the deaths of the last representatives of the school of public service, Roger Latournerie (1977) and André de Laubadère (1981), the school of Bordeaux developed

41 BURDEAU, 477.

42 DE LAUBADÈRE, André: Revalorisations récentes de la notion de service public en droit administratif français, *Actualité Juridique. Droit administratif I. Doctrine*, (1961), 591-599.

by Léon Duguit and Gaston Jèze also disappeared.⁴³

To summarise this short study, the school of public service (school of Bordeaux) founded by Duguit and Jèze was the most important scientific trend in 20th century French administrative law. In addition to the founding jurists, the main representatives were such excellences of the administrative law as Louis Rolland, Roger Bonnard, Marc Réglade, Roger Latournerie and André de Laubadère. The importance of the school has been relegated to the background nowadays but its main theories have still remained dominant in today's French administrative judicial practice.

43 MELLERAY, Fabrice: Que sont devenues les écoles de Duguit, in: *Autour de Léon Duguit*. Colloque commémoratif du 150^e anniversaire de la naissance du doyen Léon Duguit Bordeaux, 29-30 mai 2009, (sous la direction de MELLERAY, Fabrice), Bruxelles 2011, 376.