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**LAW AND ECONOMICS IN 20TH-CENTURY EUROPE: HISTORY AND METHODOLOGY**

Edited by Sophie Harnay and Thierry Kirat

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The paper explores the early 20th century conceptions of the relationships of economics and the law of two prominent French legal scholars: François Gény and Edouard Lambert. They have been innovating in legal science and were arguing that law should work closely with the social sciences, including sociology and economics. Gény and Lambert deconstructed the idea of an autonomous science of law. Their insights into law, society and the economy are quite similar to the key issues raised within the modern Institutional Law and Economics paradigm.

1. Introduction

To my knowledge, the problem of the economic ideas of jurists of the past has not been studied. Heath Pearson’s book on the Origins of Law and Economics is devoted to how, between 1830 and 1930, American and European economists significantly developed a new science of law, which has stagnated ever since (Pearson 1997). According to Pearson, the cornerstone of the economists’ new science of law is to be found in individualism and economic rationality.

The purpose of this paper is to explore the early 20th century conceptions of the relationships of economics and the law of two prominent French legal scholars. François Gény, was known for his original theory of judicial decision-making, and Edouard Lambert was recognized as a major contributor to the development of comparative law. Apart from their intellectual, and probably, personal proximity, both argued that the task of legal practitioners and scholars must include a consideration of the impact of key economic factors on modern private law. Gény and

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1 Pearson (1997) focuses on the German historicists, as well as Carl Menger, Achille Loria, and Emile Laveleye.
Lambert are known as two innovators in legal science who thought that the law should work closely with the social sciences, including sociology and economics. Some argue that the European legal thinkers have been influential among the American critical jurists. Vincent Fowler Harper was considering, in the early 1920’s, that:

One has only to look at the repeated references in the writings of Pound, Cardozo, Wigmore and many others to see how the work of Gény, Jhering, Erlich, Duguit and other civil law jurists were used in the shaping of American ideas concerning law. (Harper 1924, 252-253)

It has been suggested that France exhibits a specific variety of institutionalism (Frobert 1997). More specifically Frobert restricts the contribution of jurists to an institutionalist research program at the University of Lyon, considering that Lambert’s Institute of Comparative Law was the core of an emerging research program based on the complementarity of law, economics, and sociology (Frobert 1977: esp. 1539-1542). Frobert’s analysis deserves to be qualified. However, we must recognize that Lambert and Geny’s legal science can be interpreted as a French variant of American sociological jurisprudence and institutional economics.

As a matter of fact, John Rogers Commons’ only two publications in French were in books edited by Gény and Lambert; and some of Lambert’s doctoral students benefited from a Rockefeller Foundation grant to visit Commons at the University of Wisconsin (André Philip). Both were known by leading American legal scholars, in particular the Dean of the Harvard Law School, Roscoe Pound, and Judge Learned Hand, who wrote a review of Lambert’s book (Le Gouvernement des juges, 1921). Gény was one of the favorite European jurists among major proponents of legal realism (like Cardozo and Frank). Lambert propagated Pound’s ideas in France (Dubouchet 1998; Petit 2000).¹

All this evidence deserves attention. I will argue that Gény’s and, more importantly, Lambert’s theories, paved the way for institutional law and economics in the interwar period. Unfortunately, their task was never completed, relegating them to oblivion.

Section 1 will provide a brief overview of Geny’s and Lambert’s achievements in legal theory. Section 2 will explore their conceptions of law and the social sciences. Section 3 will focus specifically on economics. Section 4 will test the proximity of their concepts to the program of Institutional Law and Economics.

¹ Kennedy & Belleau (2001) provide a rich analysis of the reception of Gény’s ideas by American legal scholars; and Kirat (2001) studies Gény’s and Lambert’s connections to American debates about judicial-decision making in common law systems.
2. An Overview of Gény’s and Lambert’s Legal Theory

Before delving into the heart of the problem, an overview of the context of early 20th century French legal science should prove useful.

2.1. Context in French Legal Science

In the field of legal thought, the turn of the 19th to the 20th century was characterized by sharp critiques of both legal positivism and the Exeget School, in an atmosphere in which legal science was being reassessed. Even if positivist-normativist conceptions persisted, some law professors tried to reintegrate law into the social sciences or, even, impose a view of law as itself a social science. Public law specialists, such as Maurice Hauriou at Toulouse and Léon Duguit at Bordeaux, were open to the ideas of Emile Durkheim, and considered law and legal rules as social facts. Specialists in private law, such Raymond Saleilles, François Gény, and Edouard Lambert, focused their attention on the social foundation of law to understand how law corresponds to social reality. One may label them «jurists-sociologists» (Serverin 1985).

What was then at stake primarily concerned the relationship between law and society. Legal positivism and normativism were leading to a predominant conception of the legal order in terms of a set of legal rules that should be formally logical, coherent, and non-contradictory. They did not have to be connected to social facts. German jurists of the interessjurisprudenz school (Ihering, and Ehrlich) and the French school of «free scientific research» (Saleilles, Gény, and Lambert) assigned themselves the task of understanding the position of law in the field of social regulation. Law is then no longer simply a collection of statutes: much of it can be found in the courts’ activities and the power of judges.

2.2. Gény and Lambert

François Gény (1861-1959) was born in Lorraine, in the eastern part of France. He studied law in Nancy and became a tenured professor in 1887. He taught successively in Algiers, Dijon (where he met Raymond Saleilles) and, then, Nancy until his retirement. In his two major books, he developed his theory of judicial decisions based on the idea that legislative law is far from sufficient to solve practical legal problems. Gény argued that, despite the silence of legislative law, the judge is compelled to make a decision. However, Gény’s problem lay in avoiding any sort of judicial discretion. Gény found the solution in the notion of «free scientific research».
The judge must make recourse to custom as a basis for his decisions; if that is impossible, the ultimate grounds for decision must be found in «free scientific research». The meaning of such an expression is that facts are objective, and exist as such. The idea of the objectivity of economic or social facts means that the judge cannot decide without taking the «nature of things» into account. However, Gény’s conception of the «nature of things» was not purely materialistic. It was crucial for him to avoid a materialistic conception of the origins of law, such as the Marxist and German historicists’ theories of the sources of law. Gény argued that the «nature of things» is twofold: on one side, the social realities per se, which he called «positive things»; on the other side, conscience and morals, the sole source of rules of conducts. In my opinion, the latter can be interpreted in terms of «culture».

Edouard Lambert (1866-1947) was born in Laval, in the middle of France. He obtained the degree of Doctor in Law at the University of Paris in 1893. His doctoral thesis was devoted to la stipulation pour autrui. Appointed as a professor of law in 1896, he moved from Paris to Lyon where, in 1900, he taught a course in the history of law. Educated in a traditional French approach to law, he gradually became a specialist in Roman law. In 1906-1907, he moved to Cairo as Director of the Khedivial School of Law. Despite the fact that he had never been trained in Arabic, he had earlier shown an interest in Muslim law, in a book published in 1903 (Etudes de droit commun législatif. La fonction du droit civil comparé). His experience in Egypt was short-lived. Actually, Lambert’s method of teaching was not very appreciated by the English colonial authorities in Cairo. Rather than delivering a dogmatic view of the French civil code to Egyptian students, Lambert was inclined to have them focus on the working of Egyptian customs and the decisions of the Anglo-Egyptian courts. Leaving Cairo prematurely, Lambert returned to the University of Lyon where he devoted serious efforts to allowing about fifty former students from Cairo to join the law school a few months later.

Lambert took this opportunity to develop a specific seminar for Egyptians: the Séminaire oriental d’études juridiques et sociales (Oriental Seminar for Legal and Social Studies). He also created a publication series in order to edit some of the research publications stemming from the Séminaire. This was actually a precursor of the Institut de droit comparé, created in 1921, thanks to Lambert. The purpose of this institute was threefold. First, to conduct research into legal history that emphasized the common roots of Anglo-American common law and continental civil law. Second, to learn from the American case-law approach, and incorporate an attempt to balance conflicting interests into the context of civil law systems. Third, to consider the working of legal (in par-
ticular judicial) processes in questioning the economic and social roots and operation of law in society rather than «what law is».

3. Law and the Social Sciences

The end of the 19th century and start of the 20th century is a rich period in terms of the renewal of legal science in France and elsewhere. French legal thinkers were more or less convinced that the modernization of legal science required linking legal research with social science, in particular, sociology.

Let us start with Gény. At the outset, it can be observed that his conceptions of sociology changed over time, and that he disagreed with Léon Duguit, one of the main advocates of the merging of law and Durkheimian sociology, who wished to promote a sociological and experimental science of law (Chazal 2010). Over time Gény oscillated between an initial denial of the scientific status of sociology and the necessity for lawyers to tackle the «nature of things» issue by drawing upon all relevant knowledge, in sociology, psychology, economics, or statistics.

After stating in 1899 that «legal science» is a branch of «applied sociology» (in Méthode, 23), Gény explicitly dealt with sociology in his 1927 book Science et technique en droit privé positif. He reviewed some of the major sociologists, Lévy, Lévy-Bruhl, Bayet, and Durkheim, in a chapter entitled «The Sociological School», part of the volume dedicated to the Elaboration scientifique du droit positif. Among the authors reviewed, only Durkheim escaped a harsh critique, grounded in the idea that sociologists were far removed from a scientific spirit, since they instilled their own system of values (in favor of legal socialism or solidarism) in their theory. Gény did recognize the value of Durkheimian sociology. However, he ultimately reproached sociology for refusing to develop a normative sociology of law; Durkheim’s basic methodology limits sociology to positive facts, and it fails to provide any insight into the norms of conduct that a society may adopt. (Science et technique II, 84). Therefore, Gény offered his own definition of sociology, what we may call a jurist-ad-hoc conception of what the discipline means: «by sociology, one must understand … the scientific knowledge of objective social reality and the laws that its evolution needs» (Frydman 2001, 221).

As for Lambert, he is known as an advocate for the opening up of legal science to social science. Such openness was not present at the start of his intellectual career. Lambert moved from an initial distrust to a certain degree of opening to social science, more specifically economics. In his first book devoted to comparative law, La fonction du droit civil comparé (1903), Lambert argued that:
It would be better still to stay true to the old idols, worshipped by the interpreter of
the Civil Code or the pantheists that renounce them for worshipping fetishes, less
rotten, but perhaps more rough-hewn yet, before which, too often, the metaphysi-
cians of political economics and sociology invite us to fall to our knees.

(Lambert 1903, 924)\(^1\)

Twenty-five years later, in his long foreword to Robert Valeur’s book
about the methods of teaching law in American universities (1928),
Lambert expressed a radically different conception: he defended the
need for the law to occupy the «main central field of applied social sci-
ence» (Lambert 1928, xxv). In the same foreword, Lambert lauded the
construction of American case-law reports:

I do not think there are better ways to make beginners in the study of law see the
practical and professional utility of studying economics and social science…than
showing them, through concrete examples, the results that would be obtained
through the methods of mechanical jurisprudence…and those that would be
achieved using the new methods of the scientific study of the law, exposing them to
“opinions” issued in the same case, on one hand by lawyers from the old school, and
on the other, by a writer and a historian of law as outstanding as Justice Holmes, or
a lawyer as solidly equipped for research in the social economy as Judge Brandeis.

(Lambert 1928, xxv-xxvii)

In 1933, in his foreword, entitled «Economics and Law of Public Utili-
ties», to Trévoux’s book on the development and regulation of the elec-
tric sector in the USA, Lambert was writing:

Nowhere does spring…more evident than in the field of economics and the law on
public services this truth…that the study of law as a social science and the study of
law as an international science are the two sides of one and the same thing.

(Lambert 1933, 54)

In explaining his thinking, Lambert provides the key to understanding
this last quote. The study of law as a social science is, in effect, seeing
that the «specialists in this branch of the legal art» need a culture of so-
cial science, including economics to pick out the «essential data» needed
for the «weighing and balancing of interests» (Lambert 1928, 54). The
study of international law as science refers to the interest in «closely
monitoring the movements of jurisprudence in neighboring countries
as well as those of national jurisprudence» (ibidem, 55). Lambert seems,
then, to refer the use of the social sciences and economics, to legal prac-
titioners, judges and civil servants.

Finally, at other times in his writings, Lambert described the work of
some of his collaborators as sociological jurisprudence (Lambert 1925,\(^1\)

\(^1\) All translations are the author’s.
xx. Amongst them is Emmanuel Levy (in Lambert 1925, ix, Lambert refers to the «sociological pragmatism» of this law professor in Lyon). The idea of solidarity was also shared by numerous Lyonnese professors of law. Many of them (like Lévy and Paul Huvelin) were close to Durkheimian sociology. As a matter of fact, Lévy and Huvelin were collaborating in the Durkheimian journal of sociology *L’année sociologique*. Lévy developed an original theory of law in regard to two main considerations: first, that law is based on collective beliefs and, second, that law constitutes an instrument of social accounting of claims and debts held by individuals and social groups

4. Economics and the Law

Gény and Lambert differ in terms of their perception of the relation between legal science and political economy. Lambert was, both practically and scientifically, closer to economics than Gény.

4.1. Economists and Jurists in Lyon

While it seems that Gény did not have any specific connection with professors of political economy, Lambert’s *Institut de droit comparé* at Lyon was, to some extent, conceived as an interdisciplinary academic institution. One of the leading professors of political economy, and one of the then few economists influenced by Léon Walras’s theory of general equilibrium, was a direct collaborator of the *Institut de droit comparé*. Étienne Antonelli (1879-1971), professor of History of Economic Thought at Lyon from 1919 to 1924, occupied the position of director of the Institut’s library of political economy. Other professors of political economy in Lyon, despite their non-participation in Lambert’s Institut, were also focusing on institutions and law.

François Perroux, who had been educated at this university where he defended his thesis on *Le problème du profit* was tenured as a professor of political economy. Perroux’s theory of capitalism was based on a sociological, realist and reformist perspective. He was preoccupied with the operation of economic institutions and their legitimacy, in a way that was quite close to the American institutional economists (Dufourt 2009, 424). Charles Brouilhet and Emile Bouvier were economists acquainted with Walras’s model of social economy. Their reception of Walras’s theoretical system was actually broader than the single analytical model

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1 According to Frédéric Audren: «Lyon is among the faculties that can claim the title of ‘Social Science Faculty’… in addition to traditional subjects, students are offered … courses such as political economy, the history of economic doctrines, farmland legislation and economics, private international law or prison studies» (Audren 2007, 22).
of general equilibrium. They focused on the crucial complementarity between the three levels that Walras had investigated: pure economics, applied economics, and social economics. The latter two were conceived as helpful in thinking about the relationships between social, economic, and legal systems. For instance, Brouilhet stated in his *Précis d’économie politique* published in 1912, that his main purpose was to investigate «the interpenetration between political economy and the law», thereinafter to «demonstrate the legal foundations of economic institutions». The ideology of these Walrasian economists was largely marked by a Proudhonian and solidaristic orientation.

In the field of industrial labor, Paul Pic, professor of industrial law, and his doctoral student Justin Godard, who will be several times member of the government, had created in 1900 an influential journal *Questions pratiques de législation ouvrière et d’économie sociale*. A ‘Republican of progress’, Pic can be considered the ‘inventor’ of labor law in France (Frobert 2000, 305). He sought to put the law in the service of social peace, which could not be provided by either the open market or by the state, but by the social economy, which he defined as «the set of means practices implemented […] to achieve economic theories tending to the welfare, to the improvement of the position for the higher number of people as possible» (Pic 1900, quoted by Hakim 2007, 133).

Among the economists in Lyon, Antonelli recognized his great intellectual debt to Lambert. Antonelli devoted a large part of his career to exploring the mutual dependence of every economic phenomenon that he drew from Walras’s general equilibrium model. He theorized about these interdependences in the context of a Durkheimian organic solidarity theory that considered the legal framework of the economic process. He was an eclectic economist, in the sense that his thoughts on capitalism and its evolution were fueled by several sources: first, a strong Proudhonian inspiration as far as the notion of a solidarity-based and organized capitalism was concerned. Second, Hauriou’s *Théorie de l’institution*, which exerted on him a genuine influence, as confirmed by the fact that he wrote an article on law as a social institution «Le droit, institution sociale». Third, he was influenced by Emmanuel Lévy’s theory of law as a system of beliefs. Antonelli emphasized the role of opinions in the interplay between social practices and formal legal rules. Consequently, he questioned the modalities through which collective beliefs and will emerge and are transformed. Finally, Antonelli took from Lambert’s notion of a «flexible law, shaped by economic realities and social practices». He intended to situate the emergence and evolution of legal rules in a complex and changing social context, driven by interests in conflict and by the processes of individual and collective negotiation on legal norms.
Antonelli borrowed from Lambert his notion of a “legal system” and transformed it into a concept of an “economic system” that he defined in these terms: “the set of relations and institutions that characterize the economic life of a given society, and are localized in time and space” (Antonelli 1938, 379). When applied to capitalism from a purely economic viewpoint, this definition reveals its roots in the institutions of individual property and individual responsibility, and in a utility-equivalence exchange. In a 1961 paper, Antonelli summed up his conception of the law as a social institution. Building on the legal theory of institutions, he insisted on the necessity of getting rid of individualistic legal concepts; he therefore recommended adopting Lambert’s conception of “a supple law, modeling itself on economic and practical social realities, without burdening itself with the legal and metaphysical straitjacket within which the written law would like to confine it” (Antonelli 1961, 8).

4.2. The Economic Substance of Gény’s and Lambert’s Theories

In terms of the substance of economics in Gény’s theory of law, two questions deserve to be raised: its relation to utilitarianism and the contribution of economic facts to the scientific creation of law.

Concerning the former, one can find several utilitarian claims in the thousands of pages written by Gény. Does this mean that Gény adopted Bentham’s utilitarianism? It seems that Gény changed his conception over time, and moved from a strong utilitarian claim to a mitigated one. In a 1917 contribution to an American book on legal philosophy, he wrote:

How then shall we find the ultimate standard by which to measure the juridical value of social facts? Without entering upon the transcendental regions of our moral nature, I believe that we shall easily come to an agreement on the proposition that every body of law should tend toward realizing, in the life of humanity, on the one hand an ideal of justice, on the other an ideal of utility, meaning by the latter expression that which by common opinion is considered as promoting the welfare of the greater number. (Gény 1917, 14)

In this text, Gény makes a strong utilitarian claim, as indicated by the expression “promoting the welfare of the greater number”. However, ten years later, in Volume II of his major book *Science et technique en droit privé positif* (1927), the initial emphatic utilitarian claim is strongly qualified: Gény does not give up the concept of social utility, but he lessens its importance owing to the idea of absolute justice. Looking at a fundamental principle of a scientific method of making law through the

1 Frydman (2001) argues that Gény’s utilitarianism is closer to Mill than to Bentham.
discovery of the «nature of things», Gény affirms that the «nature of things» contains in itself an equilibrium that the jurist discovers through his reason and his moral consciousness. The ultimate end is public order, which is nothing but «the practical finality and the social purpose of institutions», in other words, social utility (Frydman 2001, 225). Yet Gény subordinates social utility to a non-utilitarian idea of justice. Any jurisconsult seeking a scientifically-based legal rule proceeds on the basis of his intuitions, beliefs, and conception of the world. These provide the ground for the search for just rules, justice being «the ultimate value of law» (Gény 1927, 11, 4). Gény extends his analysis to demonstrate that «le juste contient dans ses flancs l’utile» (ibidem, 20).

Concerning the second question, relating to the conception of economics, it must be noticed that in his two major books Gény scarcely quotes economists. When he does so, it is about minor issues or in reference to extra-economic considerations found in economists’ writings. For instance, Gény quotes the Walrasian-solidarist economist Charles Brouilhet (Traité d’économie politique) in discussing his conception of law (his belonging to the legal socialism that Gény condemns). Gény’s conception of political economy is a substantive one:

the problem of natural law is framed in all the sciences, dealing with the life of man in society and which suggest rules of conduct in his relations with others. But when considering the most notable and most general of these sciences, at least those which have the most direct influence on legal rules, we come to see that the law is determined by the moral and political economy.

(Gény 1927, 19)

The political economy, also termed the «economic system», is a part of the social realities in which the «donné», of which the law is a part, resides. Gény agrees with the idea of a law grounded in economics, but only under certain conditions that prevent him from adopting the idea of a materialistic theory of law. Instead of a classical conception of political economy as the science of the production and distribution of wealth, Gény argues that «in reality, economics must by understood in a more comprehensive way, as designing, in a way, the substance of social life, under all its aspects, ideal and material» (Gény 1927, 20). The relevant issue to a jurisconsult being «the direction to be followed», the ideal aspect is crucial. As, according to Gény, the ideal is simply the outcome of morals, morals are more important than utility and economics: «Ultimately, despite being fed and fertilized by the economic element, law remains dependent upon morals» (ibidem).

Concerning Lambert’s substantive conception of economics, he did not have any ambitious project to develop a theory of legal rules in relation to the working and evolution of the economic system. The scope of his own work is narrower than, for example, that of Commons, in the
sense that he did not undertake to consider what Commons called the «legal foundations of capitalism». Lambert’s conception of economics is twofold: first, he argued that the judge is now a crucial actor connecting law and economics; and, second, he found in economics a source of knowledge about the actual transformations of the economic system, the main trend being the major development of going concerns.

**Courts, law and economics.** In Lambert’s view, economic facts are part of social change; and jurisprudence is the main vehicle for law to adapt to a dynamic society. In any case, the process of change cannot be tackled through classical legal reasoning. It is not a matter of abstract and deductive thinking, but rather of pragmatic-realistic analysis.

Lambert focused on the economic dimension of conflict resolution within the judicial arena. The notion of balancing private interests and public/private interests, as well as the reasonability standard in American common law, appealed to him. He felt that the implementation of standards by the courts constituted a powerful instrument of pragmatic adaptation of law to changing economic and social conditions. Moreover, judicial activity, conceived as the balancing of interests, supported his idea that economic evolution is not harmonious.

This view is very close, if not identical, to Pound’s and Commons’ reference to the dual relationship between liberty and exposure. Lambert tried to extend this typically American notion to French civil law and the judicial process. His purpose was to situate human actions and conflicts, both individual and collective, in a context of formal legal rules and economically-grounded interests. While positivist jurists were clinging to the former dimension, Lambert intended to recognize the bi-directional relationship between formal law and interests in conflict.

**Corporate groups.** The trend of economics is characterized by the growing importance of corporate groups, which question the individualist philosophy of the civil code. Lambert is close to the followers of legal socialism, first and foremost Lévy, as well as to Pound’s *Sociological Jurisprudence* (Petit 2000).

Lambert emphasized

the incapacity of civil law’s individualist traditions to resist the natural evolution of habits which, in every part of industrial and commercial activity, tends to place inter-individual relationships, to which our codes exclusively refer, under the control of higher level legal relationships connecting corporate groupings.

(Lambert 1921, 246)

Finally, Lambert was more interested in legal change via the judiciary than in economic change *per se*, in a sociological jurisprudential style.
More specifically, he considered judicial activity and litigation as a source of knowledge about the working of the social-economic process (Kirat 2007).

5. A Comparison with Institutional Law and Economics

The ultimate issue I would like to raise is whether Gény and Lambert represented a French branch of institutionalism. I am referring here to both old institutional economics and its contemporary law and economics variant. Before going further in my analysis, it is worth noting that both Gény and Lambert were connected to leading legal scholars in the United States – more specifically to followers of the new legal thinking who were rejecting classical legal thought. These included Pound’s sociological jurisprudence,¹ various realists (like Cardozo and Frank), and Commons’ institutionalism.

Without delving further into these concepts, it suffices here to say that Gény is considered close to legal realists (Mayda 1978; Kennedy & Belleau 2001) and that Lambert recognized his full agreement with Pound’s and Commons’ analysis. In his contribution to Gény’s Mélanges, Commons complements his original article «The Problem of Correlating Law, Economics, and Ethics» with a use of Gény’s libre recherche.

According to Neil Duxbury, there were similarities between institutional economics and legal realism:

both emerged in the 1920s in response to the predominance of formalism in American economic and legal thought; both stressed institutional context over and above the formalist belief in supposedly invariable rules and principles; both, in the 1930s, gave support to the New Deal world-view.

(Duxbury 1991, 303)

Regarding the edification of a Welfare State, Lambert and the Lyonese academics like Pic, Antonelli and Lévy stand more closely to welfarist institutions than Gény, whose political and social ideas were rather conservative (Prémont 2001).

The main issues raised in institutional law and economics relate to a number of fields of inquiry, such as (see Medema, Mercuro & Samuels 1999): i) the evolutionary nature of law and economics; ii) the tension between continuity and change; iii) the working rules and economic effects of legal rules and institutions, notably through the judicial process; iv) conflicting interests and the attribution of legal rights and exposures; and v) the pragmatic creation of legal rules. Most of these issues, even

¹ According to Carlos Petit, Roscoe Pound wrote in a letter to Holmes that he considered Gény’s Méthode d’interprétation… as «the best thing in French» (Petit 1991, 230).
if they were not expressed in the same terms, were examined by French jurists under Lambert’s leadership.

i) The evolutionary nature of law and economics. For both French jurists, the key issue for a renewed legal science was to tackle the dynamic relationship between law and socio-economic and structural change. Lambert, on the basis of his Romanist training, was anxious to discover the ramifications of modern legal systems, whether civil law or common law, in response to socio-economic and cultural impulses. Furthermore, Lambert focused on the dynamic process of adjustment between legal and economic evolution, a process in which the courts play a central role. Gény’s problem was to bring together the actual transformations of the real world, legal changes, and the evolution of «morals and consciousness», i.e., culture and values.

ii) Continuity and change. The tension between continuity and change raises the question of the social order. Gény and Lambert both acknowledged the importance of that issue. In his 1899 book, Gény recognized that one of the main tasks of legal scientists was to reconcile harmony and progress. The judge, through free scientific research, would bring about a subtle and complex equilibrium between continuity and change. On the basis of the «nature of things», the judge must compare conflicting interests, and find the basis of their equilibrium in the nature of things. However, the balance of interests is not a simple matter of private rights and interests: it encompasses a higher purpose, une finalité supérieure – that is to say, the maintenance of public order. It is through the conservation of public order that the evolution of law accommodates the changing necessities of social life (Frydman 2001, 222-226).

Lambert tackled this issue in specific terms: according to him, the crucial challenge for law is the reconciliation of two antagonistic needs. On the one side, the security of legal relationships; on the other, the adaptability of law to changing social and economic conditions. The former requires a rigid and formal law, a mechanical jurisprudence, while the latter requires little formalism, opening the way to judicial discretion. The solution to that trade-off is found, by Lambert, in the judicial use of standards, instead of the «the old tool of the rule of law» (Lambert 1925, xix).

iii) Conflicting interests. Lambert and Gény shared a conception of courts as the core institutions for the transformation of conflicting interests into legal rules capable of preserving a social order. Socio-economic transformations generate tensions and conflicts between individuals
and social groups, which are impossible for any legislator to predict and resolve. The judge is, from Gény’s and Lambert’s perspective, the main operator of the process. However, in Lambert’s view, judicial regulation is a matter of authority, while Gény considered the judge’s role from a more consensual perspective. Moreover, despite their individual peculiarities, both jurists compared the interests of the parties in conflict, the standard of comparison being not legal, but (at least in part to Gény) economic, insofar as it involved the assessment of damages, both individual and collective. This notion of the balance of interests, linked to the problem of evaluating individual rights in the judicial arena, anticipates the core issue of modern law and economics. It denotes a vision of the «economics of interests» deserving legal protection that echoes the economic and sociological analytical framework then drawn upon by Pound (Kirat 2012).

iv) Pragmatic creation of law. Regarding the conception of law as an instrument of social engineering, Lambert is more fiercely pragmatist than Gény, even if Gény’s perspective on free scientific research emphasizes the practical consequences of judicial decisions. The two differ in their conceptions of the ultimate sources of law. While Gény argued that, when the statute law and customs cannot provide a legal solution, the judge’s duty is to discover it in the «nature of things», Lambert claimed that case-law is not the sole source of law and legal change; courts simply give legal force to originally extra-legal rules (that Commons labeled «working rules of going concerns»). As Lambert stated:

The case-law method is no more the sole source of law in common law systems than in our country. It is only a part of the structure which coordinates the functioning of all the other elements of the mechanism that creates law, the central device which mixes and apportions the elements provided by legislation on the one side, and by extrajudicial practices, whatever their forms, on the other: administrative practice – about which Pound has noted, with probably a bit of exaggeration, the growing importance – conveyancing (…), customs of trade and business, statutes and disciplinary rules of conflicting social groups, and finally the set of economic or moral observances that constitute in a sense the umbilical cord through which law keeps continuously in contact with the social context which feeds it.

(Lambert 1921, 256-257)

6. Conclusion

The theses of Gény and Lambert are in response to issues and challenges they situate within the framework of legal science. They theorized about the relationship between law and social science and economics starting from questions about how to think about the law. They
came to link law and society, with the aim of overcoming formalism, legal abstractions, and deductivism. They traced a path of legal science to what Duncan Kennedy calls the «social» in which economic dimensions are present (Kennedy & Belleau 2001).

Even if they did not provide an impetus to a rapprochement between legal theory and political economy as a scientific field, Gény and Lambert deconstructed the idea of an autonomous science of law. Therefore, Gény and Lambert’s ideas fit with Pound’s conception of law: «Law is no longer anything sacred or mysterious. Judicial decisions are investigated and discussed freely by historians, economists, and sociologists» (Pound 1907, 911). Finally, their insights into law, society and the economy are quite similar to the key issues raised within the modern institutional law and economics paradigm.

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