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An Intellectual Trajectory in the Age of Antiformalism. Gény and the Rise of the Law of Society*

1. Sometimes the private life of an author tells more than his works; it reveals details and behind-the-scenes activities, which clarify, confirm or belie the controversial aspects of his thought. This is even more true when the intellectual "caliber" of the author is so high, that he sprays fragments of his philosophy in every corner of his private life, as Gény did in the letters he wrote to Saleilles. The correspondence between Gény and Saleilles, consisting of letters sent during thirty years (1892-1912) by the former to the latter, makes a crucial contribution not only to the explanation of Gény's thought, but also to the comprehension of the intellectual trajectory of both the jurists[1]: «an intellectual trajectory in the age of antiformalism», since their dialogue reflects the fermentations and the suggestions of a wide legal movement.

Actually the Gény and Saleilles intellectual trajectory has to be placed in a European-wide framework, within an extraordinary period of the European legal culture, perhaps unique because of its fertility, its tension, its disruptive nature. Gény and Saleilles are not two soloists, but two voices of a polifonic chorus, which kept together interpreters of different technics and tonalities. They are full part of a cultural movement that goes beyond the national borders, connecting Italy, France, Germany, Spain; a movement composed by «juristes inquiets»[2], who share the annoyance towards every form of stillness, the refusal of the idea of statute-law as unique source of law, the disapproval of a legal order based on individualism, the desire of a renewal of the topics and of the disciplines' boundaries.

2. The political factor may represent a valid key to explain this cultural renewal, above all for the French legal culture, deeply marked by the historical changes following the revolutionary break[3]: the Napoleonic state model, the Louis XVIII's Restoration, the July's Revolution, the 1848 Movement, the Second Empire. From the second half of the 19th Century, the spread of the socialist ideology, the colonial

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1 C. Jamin, F. Audren et S. Bloquet (correspondance établie, présentée et annotée par), *Lettres de François Gény à Raymond Saleilles. Une trajectoire intellectuelle. 1892-1912*, Paris 2016. See with the same perspective A. Aragoneses, *Recht im* Fin de siècle. *Briefe von Raymond Saleilles an Eugen Huber (1895-1911)*, Frankfurt am Main 2007.

2 M.-C. Belleau, *Les* juristes inquiets*: classicisme juridique et critique du droit au début du XX^e siècle en France*, «Les Cahiers de Droit», 40, 1999, pp. 507-544.

3 See F. Audren et J.-L. Halpérin, *La culture juridique française. Entre mythes et réalités. XIX^e-XX^e siècles*, Paris 2013.

challenges, the justaxposition of international alliances, the processes of national unification, the religious issues, the alternation of forms of State and government, all this contribute to create a political context of anxiety, which influences the legislative choices, affects the ground of the public rights, conditions the methodological and thematic options of the lawyer. At the end of the 19th Century the French jurists are divided between socialists and catholics, «dreyfusards» and «antidreyfusards», reformists and revolutionaries, liberals and democratics, conservatives and progressives[4].

From this perspective, the Saleilles' «méthode historique» helped to build a private law able to «tradurre e fondare giuridicamente il passaggio dalla democrazia politica, frutto dell'evento rivoluzionario, alla democrazia sociale, intesa come definitivo compimento delle promesse dell'89»; it represented «l'elemento fondamentale di una complessa strategia di "salvataggio" della *République*, consistente nel contenimento e nella organizzazione del conflitto attraverso lo strumento della razionalità giuridica»: the legal science should save «il fragile edificio repubblicano», since the activity of jurists assumed «un carattere intrinsecamente politico»[5].

Even the Gény's methodological suggestions, from this point of view, had a proper political function, being used for containing the advance of the socialism and for avoiding the collapse of the traditional private law[6]. In the absence of a complete social and industrial legislation, the judiciary interpretation should be used to face the problems of the industrial society, so to deny any space to the radical and extreme political options.

Also in Italy, at the end of the 19th Century, the political framework is stretched and complex: the after-effects of the catholic issue, the Triple Alliance, the foundation of the socialist party, the «Fasci siciliani», the Adua's defeat, the scandal of «Banca Romana», the massacre of Milan, the murder of Umberto I, the turning point of Giolitti. And in Italy as well the jurists belong to different political traditions; they are either socialists or catholics, either supporters or detractors of the universal suffrage, either favourable or contrary to the colonialism, either allies or adversaries of the Roman Church.

Neverthless, the political factor does not appear adequate or in anyway sufficient to explain the anxieties and the apprehensions of the new legal culture, the proposals and the programs of the European Reform movement. The political key might be misleading, a way to neutralize the innovative effects of the new proposals, exactly as it happened in Italy with the «Social School of Law»[7]: the tag of «legal Socialism»,

[4] See, for the Third Republic, C.-M. Herrera (sous la direction de), *Les juristes face au politique. Le droit, la gauche, la doctrine sous la III^e^ République*, Paris 2003.

[5] M. Sabbioneti, *Democrazia sociale e diritto privato. La Terza Repubblica di Raymond Saleilles (1855-1912)*, Milano 2010, p. XIX.

[6] J. Boulaire, *François Gény et le législateur*, in N. Hakim et F. Melleray (études réunies par), *Le renouveau de la doctrine française. Les grandes auteurs de la pensée juridique au tournant du XX^e^ siècle*, Paris 2009, pp. 73-76.

[7] «Social School of Law» is the definition that we suggested in F. Mazzarella, *Darwinismo, storicismo, socialità. La «nuova tendenza» di Giuseppe Vadalà-Papale*, «Quaderni fiorentini per la storia del pensiero giuridico moderno», 41, 2012, pp. 583-626, and Id., *Dialoghi a distanza in tema di socialità e storicità del diritto. Italia, Francia e Germania tra fine Ottocento e primo Novecento*, «Quaderni fiorentini per la storia del pensiero giuridico moderno», 44, 2015, pp. 381-424.

impressed to the school in 1893 by Achille Loria, became an indelible black mark, which reduced a scientifical movement of lawyers to a small partisan group of fanatical activists. In the same year, 1893, Vidari and D'Aguanno decisively rejected the definition: the new private legal science – as Solari explained – expressed in fact a *social* tendency, not a *socialistic* one, typical instead of the Menger's «Juristische Sozialismus»[8].

3. Therefore it is not – or at least it is not only – the political factor, but mainly the social and economic ones, together with the new cultural conquests coming from positivism and sociology, to push the most sensitive part of the European legal science towards a new philosophy of law, towards a reconsideration of the sources, of the methodology and of the contents of law. The heart of the matter is not the political ideas of these lawyers, if they are socialists, conservatives, liberals or democratics. Saleilles was a democratic, Gény a conservative, Salvioli a socialist, Vadalà-Papale a moderate, Kantorowicz a liberal. The heart of the matter is the extraordinary human and cultural sensivity of these lawyers, which gathers them beyond their political credo, their religious faith, their ideological character.

Despite the political and geographical distance, the protagonists of the European renewal shared the grounds of a crucial preliminary choice: the observation of the social and economic reality, so different from the one of the beginning of the 19th Century, suggested a reconsideration of the law based on the changes produced by the social question and by the industrial development[9]. The return of the social and economic facts under the lens of the lawyer showed the «disarmonia» between «leggi» and «esigenze della moderna società»[10], the distance between the legislative Napoleonic system – borned for an agricultural economy, based on the right of property and addressed to a solitary individual – and a social and economic reality of industrial kind, which was on the contrary structured in social classes and interest groups, crossed by collective and organisational mentalities, divided into unequal subjective identities[11].

The «créations d'ordre économique» – as Saleilles observed in 1899 – had upset «les rapports juridiques entre le capital et le travail, entre ceux qui produisent et ceux qui consomment», creating new rights and needs, provoking, in accordance with «certaines découvertes sociologiques», the development of a new order, based more on the logics of «solidarité» than on the spaces of «indépendance» governed by solitary «individualités»[12].

While the Code model – as Gény repeated in 1900 – remained linked «fermement

[8] G. Solari, *Socialismo e diritto privato. Influenza delle odierne dottrine socialiste sul diritto privato (1906)*, edizione postuma a cura di P. Ungari, Milano 1980.

[9] F. Mazzarella, *Dialoghi a distanza in tema di socialità e storicità del diritto*, pp. 384-395.

[10] As the two Directors, Giuseppe D'Aguanno and Alfredo Tortori, wrote in the introductory pages of the first number of the review «La scienza del diritto privato» (1893).

[11] E. Gianturco, *L'individualismo e il socialismo nel diritto contrattuale*, 1891, later republished in Id., *Opere giuridiche*, Roma 1947, vol. II, pp. 262-269.

[12] R. Saleilles, *Préface* to F. Gény, *Méthode d'interprétation et sources en droit privé positif*, Paris 1899, pp. II-III. See F. Tellier, *Le droit à l'épreuve de la société. Raymond Saleilles et l'idée du droit social*, «Revue d'histoire des facultés de droit et de la science juridique», 20, 1999, pp. 147-177.

au règne exclusif et suffisant de la loi (écrite)»[13], reproducing the image of a simple, agricultural and individualistic society, «tous les progrès de l'industrie et du commerce contemporains, les transformations d'ordre économique, les suggestions des besoins actuels» provoked in the 19th Century «tout un renouveau d'organisation sociale»[14], highlighting «l'immense complexité», «la mouvance incessante», «l'inépuisable richesse et la prestigieuse variété», «l'essence complexe et mouvante de la vie sociale»[15].

4. The first consequence, in the view of these lawyers, was the development of a dynamic philosophy, based on historical and constantly evolving law. The image of the «lebende Recht», traditionally tied to the personalities of Ehrlich and Gény, was nothing else but the consequence of this different consideration of reality, of the promotion of the social and economic facts as starting point of the legal investigation, of the application of the new scientifical knowledges to the legal sphere[16].

Since «law» was «life», according with one of Cimbali's most characteristic aphorisms, the «legal organism» had to reflect the changes of the number, the quality and the combination of life's elements[17]. Being a social product, a «fluido nerveo dell'organismo»[18], a «fenomeno della vita sociale»[19], an expression of the «spirito umano», the law conformed to the rules of the «continuo movimento», of the «successivo ed indefinito progresso», changing simultaneously with the society, transforming and progressing «in armonia colla storia e collo sviluppo della civiltà dei popoli»[20].

The option for a socio-historical conception of the legal phenomenon obviously implied the search for legal forms able to express the concrete transformations of the reality. Under different forms and with own peculiarities, the same tendencies grew up in the different national contexts: the aim of a pluralistic system of the sources of law, reflecting the variety of the reality and respecting the socio-historical nature of law; the refusal of the double role of the statute-law, as exclusive source of law and as product of an arbitrary political will; the enhancement of the interpreter's role, free from the

[13] F. Gény, *La notion de droit positif à la veille du XX^e siècle. Discours prononcé à la séance solennelle de rentrée de l'Université de Dijon. Le 8 novembre 1900*, Dijon 1900, p. 15.

[14] *Ibid.*, p. 11.

[15] *Ibid.*, pp. 14, 21 and 27. See P. Grossi, *Ripensare Gény*, «Quaderni fiorentini per la storia del pensiero giuridico moderno», 20, 1991, pp. 1-51, later republished in Id., *Assolutismo giuridico e diritto privato*, Milano 1998, pp. 157-170.

[16] See the entry *Droit vivant*, in A.-J. Arnaud (sous la direction de), *Dictionnaire encyclopédique de théorie et de sociologie du droit*, Paris-Bruxelles 1988, pp. 118-120.

[17] E. Cimbali, *Lo studio del diritto civile negli Stati moderni*, Prolusione letta nella Regia Università di Roma il 25 gennaio 1881, Roma 1881, later republished in Id., *Studi di diritto civile*, Torino 1900², p. 22.

[18] G. Vadalà-Papale, *La filosofia del diritto a base sociologica*, «Il Circolo giuridico», 16, 1885, p. 176. See F. Mazzarella, *Darwinismo, storicismo, socialità*. And for fuller details about the image of a «fluid law» F. Mazzarella, *Un diritto «allo stato fluido». Note storico-giuridiche su* aequitas *e ragionevolezza*, «Giornale di Storia costituzionale», 11, 1/2006, pp. 121-144.

[19] G. D'Aguanno, *Sull'efficacia pratica della scuola positiva di filosofia giuridica*, «La Scuola Positiva», 1, 1891, 2, pp. 58-64.

[20] I. Vanni, *Della consuetudine nei suoi rapporti col diritto e colla legislazione*, 1877, later republished in Id., *Saggi di filosofia sociale e giuridica*, a cura di G. Marabelli, Bologna 1906, p. 24.

Exegetic ideology[21], and able, thanks to his contamination with the society, both to enliven the statute-laws and to compensate for their lack; the renewal, in the name of economic, historical and social sciences, of the cultural training of the lawyer[22].

5. The correspondence between Gény and Saleilles, in this view, is a precious treasure, an inexhaustible mine of ideas, suggestions, confirmations. The letters that Gény wrote to Saleilles between 1892 and 1912 are covered by pathos; they ooze with humanity; they betray the sensivity, the fragilities, the torments of the man, before the substance and the technical style of the lawyer. It is a correspondence imbued with death, pains, disappointments, anguishes, illnesses, but also travels (Holland, Belgium, Switzerland, Paris, Loire, Lorraine, Bourgogne, Vosges), landscapes, loves, romanticism, intimacy, affections, new lives. Gény and Saleilles are first of all human beings, overwhelmed by facts and things, inclined to the emotions; they are lawyers immersed in the reality of their age, with their views planted in the material of the economic and social facts.

In 1895, back from an holiday in Bourgogne, in La Machine, Gény summarized in a few words «the only serious outcome» of his holiday, achieved thanks to the observation of the industrial world. «Le monde industriel» – Gény explained – «est fort différent du nôtre», because «on y discute beaucoup moins» and «on s'y laisse bien plus dominer par les faits»[23]. The industrial world, so lively and generous, developed «d'une façon continue et sûre, sans fracas, sans à-coups, sous la garantie d'une expérience progressive»[24]. This world did not wait for political rules, statute-laws, formal precepts, because «les mesures légales sont le plus souvent inutiles en présence des efforts privés qui les ont devancées»[25].

The solution of the legal problems – as Gény clarified in 1896 – depended mainly on the «éléments économiques des circonstances qui y donnent lieu»[26]. The science of political economy, from this perspective, earned a much more relevant role than before, «non seulement dans la législation, mais dans l'interprétation du droit positif»[27]. Gény warned that the role of the economy would barely be accepted «dans les mailles étroites et rigides de notre système d'interprétation doctrinale», but the judicial praxis, «plus avisée et plus progressive», acknowledged it «en l'appliquant d'instinct»[28].

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[21] It is sufficient to cite J.-L. Halpérin, *Exégèse (École)*, in D. Alland et S. Rials (sous la direction de), *Dictionnaire de la culture juridique*, Paris 2003, pp. 681-685.

[22] F. Mazzarella, *Dialoghi a distanza in tema di socialità e storicità del diritto*, pp. 381-424.

[23] C. Jamin, F. Audren et S. Bloquet (correspondance établie, présentée et annotée par), *Lettres de François Gény à Raymond Saleilles*, p. 82.

[24] *Ibid.*

[25] *Ibid.*

[26] *Ibid.*, p. 122.

[27] *Ibid.* Since 1901 Gény started to teach, in addition to Civil Law, «Législation économique et industrielle» (1901-03), «Législation industrielle» (1911-20), «Droit commercial» (1914-24) and «Propriété industrielle» (1924-31). For more details about Gény's accademic career see the «Système d'information» on line «Siprojuris» (the following page: http://siprojuris.symogih.org/siprojuris/enseignant/56865).

[28] C. Jamin, F. Audren et S. Bloquet (correspondance établie, présentée et annotée par), *Lettres de*

6. Following this perspective, based on the rediscovered centrality of society and economy, Gény, in a letter of 1898, outlined his social and dynamic conception of law, hurling condemnation against the «abstractions» and the «conceptions pures»[29]. The justaxposition between «*idées*» and «*réalités*» expressed clearly the distance between two worlds, two conceptions of law[30]. The spirit of law would die, if isolated by its «sources vives», while it would recover «vitalité», if enhanced by means of a «très forte inspiration philosophique et sociologique», if opened to the «mille nuances psychologiques qui éclairent les problèmes moraux», if focused on the «réalités de la vie»[31]. The law – as Gény observed the following year, in his famous *Méthode* – had to remain «chose vivante», to develop and transform in force of a «parfaite et constante adaptation aux exigences de la vie sociale»[32].

In the contrary – as Gény "denounced" in a letter written in 1900 – legal science did not develop anymore «comme le demanderait le progrès social de notre époque; ce qui se révèle surtout dans le domaine du droit privé»[33]. For this reason it was necessary to rethink the system of the sources of law and to acknowledge the creative role of the interpreter. Gény suggested an «ouverture des sources»[34], a system of the sources of law much more rich, complex and articulate than the monistic one supported by the legalistic culture introduced by the Napoleonic Code[35]. The «droit positif» advanced through «la législation, quand elle s'élabore scientifiquement»; through «la jurisprudence, lorsqu'il s'en dégage des mouvements d'ensemble qui peuvent être condensées en théories complémentaires, supplétives ou correctives de la loi»; through «la pratique et la coutume, qui peuvent être parfois expliquées et dirigées scientifiquement»; and lastly through «la doctrine, l'enseignement, l'investigation désintéressée sous se mille formes, toutes les fois du moins que ces divers modes d'activité s'exercent dans le sens de la création, de la transformation ou de nouvelles adaptations de règles juridiques»[36].

In theory it was possible to exclude some of the preceding sources and to prefer the sources more fitting to «la civilisation actuelle», but Gény believed it made no sense to exclude one source *a priori*, «parce que toutes peuvent être nécessaires à notre but»[37]. All the sources actively contributed to translate in legal terms the social, economic and moral tendencies of a specific reality. And actually «le droit positif» was «la mise en oeuvre pratique de certaines idées morales, économiques et sociales», as

François Gény à Raymond Saleilles, p. 122.

[29] *Ibid.*, p. 172.

[30] *Ibid.*

[31] *Ibid.*, p. 187.

[32] F. Gény, *Méthode d'interprétation et sources en droit privé positif*, Paris 1899, n. 185, p. 584.

[33] C. Jamin, F. Audren et S. Bloquet (correspondance établie, présentée et annotée par), *Lettres de François Gény à Raymond Saleilles*, p. 261.

[34] J. Boulaire, *François Gény et le législateur*, p. 77-79.

[35] F. Gény, *Méthode*, nn. 83-91, pp. 177-208.

[36] C. Jamin, F. Audren et S. Bloquet (correspondance établie, présentée et annotée par), *Lettres de François Gény à Raymond Saleilles*, p. 261.

[37] *Ibid.*

long as it were clear that «les questions sociales ou économiques ne seraient pas envisagées en elles-même, mais seulement en vue de leur traduction en formules juridiques, ou, si l'on veut, de leur mise en circulation dans la vie pratique, sous une sanction d'ordre juridique»[38].

It was on this basis that Gény believed in an antiformalistic conception of law, built around the creative power of the interpreter. Unlike Saleilles, who counted on the elasticity and malleability of the legal text, Gény limited the application of the legislation only to recognized cases and focused his attention on the gaps, suggesting a «libre recherche scientifique», in order to read the law living in the society, in the nature, in the facts[39]. Against the «fétichisme de la loi écrite et codifiée», typical of the «méthode traditionnelle»[40], he proposed a «méthode d'investigation sincère, qui, reconnaissant ouvertement les lacunes de la loi écrite, cherchera à y pourvoir au moyen de procédés scientifiques indépendants, scrutant, en toute franchise, la nature des choses objective, et cherchant notamment à produire l'équilibre des intérêts»[41].

Once verified the «insuffisance irrémédiable de la loi», Gény invoked the «activité individuelle de l'interprète» to "read" the law of the society, but he bound the interpreter to the «exigences de la nature des choses» and to the «conditions de la vie»[42]. He considered the interpreter not as an independent and uncontrollable sovereign, but as a means to reveal the law on the ground of the «rapports de la vie sociale», the «éléments de fait de toute organisation juridique»[43], the «faits humains»[44] and the «nature des choses»[45]. The «décision juridique» had to be grounded not on personal opinions, but «sur des éléments de nature objective»[46]. This was the «libre recherche scientifique»: «libre, puisqu'elle se trouve ici soustraite à l'action propre d'une autorité positive»; «scientifique, en même temps, parce qu'elle ne peut rencontrer ses bases solides que dans les éléments objectifs, que la science peut seule lui révéler»[47].

However – as Gény clarified to Saleilles after the publication of his *Méthode*,

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[38] *Ibid.*

[39] F. Gény, *Méthode*, nn. 155-176, pp. 457-552. For the differences between the methodological proposal of Gény and the one of Saleilles see J. Boulaire, *François Gény et le législateur*, pp. 80-83; P. Grossi, *Ripensare Gény*, pp. 175-176; M. Sabbioneti, *Democrazia sociale e diritto privato*, pp. 322-338. See furthermore E. Gaudemet, *L'œuvre de Saleilles et l'œuvre de Gény en méthodologie juridique et en philosophie du droit*, in *Recueil d'études sur les sources du droit en l'honneur de François Gény,* Paris 1934, vol. II, pp. 5-15, J. Majda, *François Gény and modern jurisprudence*, Baton Rouge and London 1978, V. Petrucci, *François Gény, «l'irriducibile diritto naturale»*, Napoli 1995, and A. Tanzi, *François Gény tra scienza del diritto e giurisprudenza*, Torino 1990.

[40] F. Gény, *Méthode*, n. 35, p. 61.

[41] *Ibid.*, n. 174, p. 545. See J. Boulaire, *François Gény et le législateur*, pp. 76-86, and P. Costa, *L'interpretazione della legge: François Geny e la cultura giuridica italiana fra Ottocento e Novecento*, «Quaderni fiorentini per la storia del pensiero giuridico moderno», 20, 1991, pp. 367-495.

[42] F. Gény, *Méthode*, n. 84, p. 179.

[43] *Ibid.*, n. 159, p. 469.

[44] *Ibid.*, n. 169 p. 519.

[45] *Ibid.*, n. 158, pp. 466-467.

[46] *Ibid.*, n. 156, pp. 460-461.

[47] *Ibid.*, n. 156, p. 460.

through another letter dated 1900 – the heart of the issue was not whether to apply the method of the «interprétation historique» or the one of the «libre recherche scientifique», but to acknowledge the interpretation is crucial for the law's fulfillment[48]. Putting aside his personal methodological proposal, Gény made perfectly clear which was the final target of his theory. The «idée commune» to accept was very «simple»: since «le Droit» was «la science sociale positive», it had to feed itself through nothing else but the «sources de la sociologie»[49]. This was the only way «pour mettre en valeur tous les règlements humains»[50]. It was not so important what was the most suitable method to express the law of the society: consider «la loi écrite comme une notion essentiellement changeant et malléable»[51]? Or save of the statute-law, «pour la sécurité de tous, son caractère rigide, mais, reconnaissant son insuffisance, élaborer, en dehors et à côte d'elle, des règles répondant aux besoins nouveaux»[52]? These were «la controverse» and «le détail», but the Gény's priority was to make accept «les principes»[53].

7. Thanks to his socio-historical perspective, Gény was able to redefine the topics and the contents of the private law, which were not anymore – or at least not only – the ones of the Napoleonic Code, but the ones typical of an industrial society. He observed the reality of his time and perceived the questions arising from the everyday life. In 1899, in La Machine, he dealed with the labor problems and commented on the strikes of Creusot[54]. Among the «réclamations, assez pueriles, en apparence, du syndicat», lay a «prétention, plus intéressante», which appeared to be definitely right: «participer directement et effectivement à l'organisation même du travail»[55]. Three years later, in 1902, Gény brought to Saleilles attention the presentation of a brochure named «De la nature du contrat entre ouvrier et entrepreneur»[56]. In the same year he developed a passion for the issues deriving from the use of the «force hydraulique», above all referring to property and expropriation[57]. Lastly he raised several times the questions regarding women's rights (suggesting to recognize their economic independence and the right to choose the marital arrangements)[58], legal protection for incompetent persons and civil liability[59].

Finally, in 1904, in a letter written in Nancy, Gény was able to frame the new private law order of the 20th Century: according to him «les professeurs de droit civil

48 C. Jamin, F. Audren et S. Bloquet (correspondance établie, présentée et annotée par), *Lettres de François Gény à Raymond Saleilles*, pp. 243-247.

49 *Ibid.*, p. 244.

50 *Ibid.*

51 *Ibid.*

52 *Ibid.*

53 *Ibid.*

54 *Ibid.*, p. 222.

55 *Ibid.*

56 *Ibid.*, p. 394.

57 *Ibid.*, p. 389.

58 *Ibid.*, for example pp. 360 and 389.

59 *Ibid.*, p. 345.

devraient tendre à éliminer, ou, de moins, à sabrer les questions épuisées, ces vieilles questions classiques, sur lesquelles il n'y a plus bien souvent qu'à constater la jurisprudence établie, … de façon à restreindre l'exposé de matières auxquelles la tradition a donné une amplitude aujourd'hui excessive»[60]. Instead of «Servitudes», «Contrat de mariage» and «certaines parties des donations», it was necessary to «traiter toutes ces questions si actuelles et si vivantes que nous n'avons guère fait que mentionner jusqu'ici: le droits de la personnalité; les droits d'auteur sous toutes les forms, les assurances de toutes sortes, le contrat de travail et toutes les questions ouvrières qui regardent le droit privé»[61].

The majority of these new topics composed the so called «droit industriel», but Gény did not share the idea that this industrial law was «une branche vraiment à part»[62]. He agreed about the speciality of the commercial law – which grounded both on the special notions of «commerçant» and «actes des commerce», and on the special jurisdiction of the «Tribunaux de commerce»[63] – but not on the speciality of the industrial law: though it consisted of subjects «dépendent pour partie du droit privé, pour partie du droit public», it was Gény's opinion that «la partie du droit privé» remained «la plus importante»[64].

«L'industrialisation moderne» – Gény concluded – was a «phénomène général qui doit renouveler toutes les choses sociales, le droit civil compris»[65]. Therefore he saw «un grave danger pour celui-ci à se mettre à part de cet élément capital de progrès, dont il a le plus grand besoin»[66].

60 *Ibid.*, p. 492.

61 *Ibid.*

62 *Ibid.*

63 See F. Mazzarella, *Un diritto per l'Europa industriale. Cultura giuridica ed economia dalla Rivoluzione francese al Secondo Dopoguerra*, Milano 2016, pp. 7-40.

64 C. Jamin, F. Audren et S. Bloquet (correspondance établie, présentée et annotée par), *Lettres de François Gény à Raymond Saleilles*, p. 492.

65 *Ibid.*, p. 493.

66 *Ibid.*