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Editorial

The fatal ambiguities of public finance law

“Financial issues have always been of considerable importance, and particularly so in France in the last 20 years. This importance can be explained first and foremost by the enormity of our annual budgets and of our public debt”¹. This remark, made in 1906, could easily – in all regards – be made today, all things being relative, of course. In recent decades we have borne witness to a succession of crises in public finance, triggering reforms that have profoundly changed the nature of an academic discipline that had previously featured prominently in the field of public law, without actually checking its decline.

Identified in financial legislation, public finance has *traditionally been more concerned with compliance in budgetary operations than managerial efficiency*. In France, it is only relatively recently that this need has really been felt, and in particular it is only relatively recently that practices implemented in private management have been adapted to public management. A sort of revolution has taken place, in consideration of the previous thinking.

Indeed, it should be recalled that the 19th century saw the progressive establishment of budgetary, accounting and fiscal law, following the Declaration of the Rights of Man in 1789, which established a number of principles relating to the resources of the State and the control of public money. A corpus of regulations was then built up and subsequently taught, studied and perfected with a view to better managing the interests of the country. A “committee of legal studies”, established by an order of 1 February 1878, even recognized the need for teaching in public finance. Such teaching, it was stated, “could not fail to please great minds, and would certainly multiply the number of men able to manage the interests of the country at any level”², as well as following a liberal political project that prioritized the role of Parliament and did away with the opacity that characterized the finances of the *Ancien Régime*. In the opinion of the committee, the teaching of public finance

1. E. BOUVIER, *La science et la législation financière dans les facultés de droit*, LGDJ, 1906.

2. P. LAVIGNE, in « Le centenaire de l'enseignement des finances publiques dans les facultés de droit », RFFP No. 28-1989.

appeared to be even more essential since France was “a country where ignorance of financial issues is widespread, but where nonetheless public life is open to all”³. One would have been entitled to expect that such an introduction of public finance into academia would have solidly established the discipline. However, apart from the fact that this introduction was not easy⁴, the discipline subsequently underwent a series of vicissitudes that have continued to the present day.

Indeed, while the brand-new *École libre des sciences politiques* incorporated courses in public finance⁵ into its programmes from 1870 (practically from its establishment), it was not until 1889 (decree of 24 July 1889) that the subject entered the faculties of law⁶, and it was not until 1924-5 that “financial legislation” courses became mandatory. Nowadays, although the teaching of public finance has spread through the universities, it has done so only inconsistently. Setting aside specific situations, it is true that the space afforded to general public finance courses, and in particular courses on public accounting, is continuously shrinking.

The place within the faculties of law initially set aside for public finances, although always limited, appears to have masked the tension – already present in the 19th century – between the legal and economic components of the subject; something that would become increasingly apparent with the growth of public interventionism. Furthermore, the rise of economic sciences in their own right, with their own faculties, failed to inspire jurists to consider what might be done in the speciality of public finance law. Moreover, the works of science and financial legislation, whether written by jurists or economists, ultimately merely paper over the confusion and their mutual inability to set up an independent discipline, i.e. to combine the financial science long taught by the economists with financial legislation, which belongs to the jurists.

As a result of this missed opportunity, public finance has fallen into quid pro quo A quid pro quo that has been accentuated by abandonment of the term “financial legislation” or even by the refusal to adopt the term public finance law”, which would bring it alongside administrative law, constitutional law, etc. The “Keynesian” period certainly contributed significantly to this lack of concern regarding the future of the discipline, given the extent to which the state and its

3. P. LAVIGNE, art. cit.

4. Cf. F. WASERMAN, *Les doctrines financières publiques au XIX^e siècle*, LGDJ, coll. Bibliothèque de finances publiques et de fiscalité, 2012.

5. “Financial systems in major States”, “Public revenue and tax”, Organisation of financial services and rules for public accounting”.

6. Cf. E. BOUVIER, *La science et la législation financière dans les facultés de droit*, LGDJ, 1906.

money were present in all sectors of society. Finally, there seemed no need to further their legal or economic specialities, no one wanted to clear up the ambiguity. Being linked to centralization, economic growth and underlying optimism for the future, the future of public finance was in the balance.

It is with the crisis of the welfare state that the issue of tension between efficiency and compliance, or between law and management, will become crucial. The need to reduce public deficits has opened public management to the culture of performance. Public finance was immediately confronted with the changed conception of the economy – i.e. its liberalization – that came about from the second half of the 1970s. And although the economic aspects thereof were profoundly questioned by a serious critique of Keynesian interpretation, it was public finance law that was particularly affected, and even fundamentally challenged. Indeed and in general, public law felt the effects of a change in economic model triggering a withdrawal of the State and an increase in the influence of the private sector and contractualization. However, *it is in particular public finance law that – on account of its marked proximity to the economic changes and challenges – has been at the forefront of change in the public sector.*

In addition to this, public finances have extended beyond the borders of the State to local authorities, social security, the European Union and even outside the frontiers of the public sector, with the growth of public/private partnerships, fragmenting the discipline, all on top of the on-going rise of tax law.

Now, as in the past, public finance is *at the very heart of the major issues facing contemporary society*. Nonetheless, this obvious presence in all areas of public and private life has not resulted in a strengthening of the discipline. On the contrary, if it is not afforded its own identity, it could disappear as a discipline if its multiple components remain scattered throughout other disciplinary fields.

For this reason, *it is not appropriate, and may even be counter productive, to confine them – as has been done in the past – to their legal aspects or – as is the case today – to their economic or managerial implications, since this is an essentially interdisciplinary field.* The absence of a global approach to public finance makes it impossible to understand the real meaning and overall unity thereof, and prevents anyone with an interest in specific aspects (taxation, Community finance, local finance, social finance) from appreciating the consistency and objectives thereof.

Consequently, public finance is simplified down to a set of economic, managerial or legal techniques, helping to reinforce erroneously held beliefs. This entirely caricatured, technical image of public finance

has too often resulted in the subject being relegated to the status of an accessory discipline or even abandoned, when in fact it deserves to be reconsidered. It would without doubt be beneficial to first **restore a less technical concept of public finance** enabling its meaning or *raison d'être* to come through. First we need to reincorporate public finance into a political process understood in a broad sense, such as the life and organization of society as a whole. In other words, **it is the political nature of public finance which we need to understand first of all. Indeed, public finance constitutes the very core and substance of political power, determining the power and evolution thereof. In an even wider sense, it is the source of economic and social direction, because it expresses the choices made by society.**

This is the price, within this context, to be paid to ensure that public finance law continues to exist as such in the future. This is a major challenge, since the extreme variety and complexity in public finance require a global understanding and implementation of a wide range of knowledge, involving teamwork among researchers from extremely diverse disciplines⁷. This is perhaps the **most significant obstacle** faced by this discipline that, having failed to overcome it, is now quartered, fragmented, endlessly seeking handholds without ever having any real success.

This marked "wandering" of its multiple facets works against construction of a discipline solidly established within academia, and wider society as a whole, in the way that law, economics and political studies are. It may even be feared that an irreversible process of obsolescence has been started, or rather accelerated. In this case, public finance law, being a multifaceted branch of law present in the daily life of each of us and our public and private institutions, would be destined at best to be absorbed into other branches of law.

It may also be feared that it retains only a secondary place, victim of an image that it was not able to modify⁸. And such a development would be a startling paradox, given the evident and fundamental importance of public finance today.

Michel BOUVIER

7. "The complexity of financial problems, when looking at them as a whole, is such as to make them extremely difficult to study. Not only is it not always easy to answer purely economic questions, but political and social factors sometimes appear to make the problems inextricable". (G. JÈZE, *Cours de finances publiques*, Giard, 1925).

8. Cf. M. BOUVIER, *Tradition et modernité des finances publiques*, in RFFP No. 41-1993.