

Career Paths into Legal Academia in France

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It is likely that a description of the way university careers unfold in France, at least as far as law is concerned, will surprise even seasoned observers of the academic world. Not everything, naturally, will appear outlandish: that the single most important precondition is having a PhD thesis is perhaps to be expected for a civilian jurisdiction; that the overall system is centralised will not astonish those that have come into even superficial contact with the country. But the extent of that centralisation, the sheer number of unwritten rules, the relative lack of importance attributed to publications and the specificities of the *agrégation*, the competitive exam which serves as the main point of entry into the body of law professors, as well as the acceleration it is designed to provide to young academics’ careers, may surprise some readers.

Before going into the details of these specificities, however, it may be helpful to provide a general overview of the ecosystem that French academic lawyers inhabit. In this field, most of them work in universities. In particu-

lar, few of the researchers of the Centre National de la Recherche Scientifique (hereafter CNRS), the French equivalent to the German Max-Planck-Gesellschaft or the Italian Consiglio Nazionale delle Ricerche (CNR), pursue law-related research,¹ and the same could be said of those who occupy positions within the various Grandes Écoles, the elite superior education and research institutions which in France exist alongside universities. In the latter case, the main exceptions² are the business schools like the École des hautes études commerciales (HEC) or the École Supérieure des Sciences Economiques et Commerciales (ESSEC), and the various Instituts d'études politiques (IEPs, more commonly known as "Sciences Po") – Sciences Po Paris, in particular, has progressively built a significant law department, known as "Sciences Po Law School". Both business schools and IEPs hire academics who had started along the traditional, university-oriented French career path, but they have also been known to target international talents.

At French universities, academics in permanent positions are civil servants. This has implications both for the hiring process, which does not involve any negotiations related to salary, budget or the number of assistants, and for career advancement, which obeys the general rules of public service. Two types of positions exist, the full professorship and the *maîtrise de conférences*, which corresponds to a lecturer or assistant/associate professor position.³ Both positions entail 128 hours of teaching per year.⁴ As of 2019, there are around 600 law professors and 1,200 *maîtres de conférences* (hereafter MCFs) in private law.⁵ PhD candidates can have their research funded through fixed-term contracts and, traditionally, apply for permanent posi-

¹ One notable exception is section 36 of the CNRS, <<http://www.cnrs.fr/comitenaional/sections/section.php?sec=36>>, which comprises sociologists and some lawyers. Its members specialise in interdisciplinary approaches to law. The CNRS sometimes co-funds research centres with law faculties; these are referred to as "Unités mixtes de recherche" (UMRs). A good such example is Strasbourg's "Droit, religion, entreprise et société" (DRES) unit, <<http://dres.misha.cnrs.fr/>>. Private international lawyers are more likely than others to be aware of legal research conducted at the CNRS because Phocion Francescakis, one of the best-known figures of the field in the 20th century, spent most of his career there.

² For the sake of exhaustivity, it should also be pointed out that the Collège de France usually has one law-related chair, which in recent years has been held by Mireille Delmas-Marty and then Alain Supiot. Similarly, the École normale supérieure is the home institution of a few academics in law, notably Jean-Louis Halpérin.

³ It could perhaps be said that a *Maître de conférences* is the equivalent of an assistant professor before obtaining his or her *habilitation à diriger les recherches* (hereafter HDR), and of an associate professor afterwards. On the HDR, see part I.2.b) below.

⁴ Provided that this teaching takes the form of lectures, or *cours magistraux*, exclusively. Seminars, or *travaux dirigés*, can be entrusted to teaching assistants and, as such, count for less: an hour-and-a-half of seminars is equivalent to an hour of lecture.

⁵ These numbers are taken from the electoral college of the private law section (Section 01) of the Conseil national des universités, <https://www.galaxie.enseignementsup-recherche.gouv.fr/ensup/Listes_electorales_CNU2019/Liste_electeurs_01.pdf>. On this institution, see part I.1.a) below.

tions immediately after their defence. This remains broadly true, even though universities have begun following a 2007 reform⁶ to offer fixed-term teaching and research positions (*MCFs contractuels*) to academics with PhDs.

For administrative purposes, research in law is divided into three areas, which correspond to three sections of the Conseil national des universités (hereafter CNU): private law (Section 01), which includes criminal law; public law (Section 02), which includes tax law and EU law; and legal history (Section 03). Naturally, this does not mean that academics are precluded from conducting research in other areas than the one they started in (though few do in practice), but that they will normally remain administratively attached to the same section of the CNU for the whole course of their career.

At least within the legal community, there is still prestige attached to the pursuit of an academic career, and particularly to the professorship in law, especially when it is obtained through the *agrégation*.⁷ It is however not unfair to say that the prestige attached to academic titles is generally less than that enjoyed by academics in some of France's neighbouring countries.

The paper will be structured in three parts, which will deal with obtaining a permanent position (I.), subsequent career advancement (II.) and provide a critical assessment of the overall system (III.).

I. Obtaining a permanent position

The first step towards a permanent academic position is, unsurprisingly, embarking on a doctorate. The supervisor will normally be chosen among the teachers of a Research Master's degree (Master 2 recherche), which explains why, for foreign students, such a graduate program is the normal point of entry into the French academic system, a year before the beginning of the thesis itself. Most doctorates are not funded, but managing to obtain funding is considered to be desirable from the perspective of a later academic career. Universities offer two main kinds of public law contracts: three-year *doctorant contractuel* contracts, which may come with teaching obligations, and one-year full-time or part-time *attachés temporaires d'enseignement et de recherche* contracts (ATER),⁸ which can be renewed once and entail significantly more teaching. Should their thesis last longer than five years, PhD candidates face a choice between signing with another university a private

⁶ Art. L 954-3 Code de l'éducation, introduced by art. 19 Loi n° 2007-1199 relative aux libertés et responsabilités des universités, J.O. n° 1185 of 11 August 2007, p. 13468.

⁷ On these debates, see part III. below.

⁸ Outside law, these ATER contracts are usually awarded to researchers who have already defended their PhDs, and they are thus viewed as funding post-doc positions with teaching obligations. In contrast, the greater number of years required to write a thesis in law explains why the ATERs are usually still PhD candidates when they take up their positions.

law contract that usually mimics an ATER when it comes to both salary and teaching obligations, working for a supreme court lawyer or filing for unemployment benefits.

Those who intend to stay in academia after the completion of their thesis are traditionally advised to pick broad, even abstract topics, though this may be changing, at least in some areas of the law. The completion of these so-called *thèses agrégatives*⁹ tends to require a significant amount of time, often much more than three years, but the outcome of the PhD is so crucial to a person's academic future that there is little incentive to rush this decisive step. Indeed, the minutes of the defence, normally written by the president of the panel, will have to be provided at the various key stages of an academic's early career. Finally, thesis prizes seem to have little influence over their recipient's future career, even though applying for them normally takes up a significant proportion of a young researcher's time and energy in the months that follow his or her defence.¹⁰

Once the thesis is defended, the researcher must turn his or her thoughts towards obtaining a permanent position. The steps required, however, will depend on whether that position is as MCF (I.1.), which is normally attempted first, or as full professor (I.2.).

1. Becoming a *maître de conférences*

The path to an MCF position is made up of two steps: the centralised *qualification* (I.1.a)) and the more classic, despite its colloquial name, "Tour de France" (I.1.b)).

a) The *qualification*

The *qualification* is the process through which a doctor in law is cleared by a national commission, the CNU, to apply for MCF positions opened by French universities. In other words, the *qualification* operates as a centralised filter aiming to cull weaker candidates – a reference to culling is intentionally jarring, because the rate of qualification is quite low, typically around 30% in private law.¹¹ Naturally, this also limits the freedom that universities

⁹ The phrase is meant to evoke the fact that the PhD candidates who embark on one of these more ambitious research projects usually do so with the intention of taking the *agrégation* afterwards. On the *agrégation*, see part I.2.a) below.

¹⁰ However, being barred by the defence panel from applying for these prizes is a negative sign.

¹¹ In 2019, for instance, Section 01 cleared 66 out of 237 applicants, see the Section's yearly report: *Compte-rendu de la session de qualification aux fonctions de Maître de conférences*, February 2019, <<https://www.conseil-national-des-universites.fr/data/document/3420/42>

enjoy when deciding who to hire, because they can only choose from the pool of applicants cleared by the CNU. Once granted, the *qualification* remains valid for four years.

The CNU is a body made up of academics who hold permanent positions. Two-thirds are elected by their peers for a four-year mandate which can be renewed, with the rest appointed by the Ministry for Higher Education and Research.¹² For private law, Section 01 comprises 72 full and alternate members, among whom professors and MCFs are equally represented. Every December, those who have defended a thesis in the course of the calendar year, as well as candidates who have been rejected in previous years, can apply for *qualification* by the relevant section of the CNU. The key elements of the application folder¹³ are the curriculum, the thesis and the minutes of the defence, to which it is recommended to add two publications of which the applicant must be the sole author.¹⁴ Two rapporteurs, one professor and one MCF, will be assigned to each applicant, and they will be charged with making an in-depth assessment of the applicant's overall profile and the quality of the publications. Over the course of a general meeting, in the beginning of the next calendar year, the rapporteurs will present each application to the whole section and issue a recommendation, after which the section will vote on whether or not to grant *qualification*. Special consideration is given to the applicant's teaching experience, and having some form of teaching experience is a *de facto* requirement. It should also be highlighted that – in law – a thesis deemed excellent can be enough to satisfy the CNU's demands when it comes to research, even if the applicant can provide no other publications.¹⁵

Those whose applications have been rejected can apply again,¹⁶ either the following year or later, and are encouraged to bolster their curriculum in the meantime. This usually entails adding to their publications or strengthening their teaching experience. A rejection can also be challenged before a body made up of the various CNU sections competent for law, economics and

66/Public/Rapports%20d%20activit%C3%A9%202019/CNU%20Section%2001%20CR%20session%20de%20qualification%20MCF%202019.pdf>, p. 3.

¹² Art. 4 Décret n° 92-70 relatif au Conseil national des universités, J.O. n° 18 of 22 January 1992, p. 1025.

¹³ For the full list, see art. 4 Arrêté du 11 juillet 2018 relatif à la procédure d'inscription sur les listes de qualification aux fonctions de maître de conférences ou de professeur des universités, J.O. n° 0184 of 11 August 2018, text n° 34.

¹⁴ Though it is not an explicit requirement, it is deemed prudent to submit two publications in French, preferably in areas of the law that are different from that of the thesis.

¹⁵ As highlighted, for instance, in last year's activity report of Section 01, p. 3, see CNU Section 01, Compte-rendu de la session de qualification aux fonctions de Maître de conférences, February 2019 (above n. 11).

¹⁶ Being denied *qualification* is not an obstacle to taking part in the *agrégation* (see part I.2.a) below). It is however, and unsurprisingly, seen as a not particularly encouraging sign.

management,¹⁷ but this remains an unusual step. Those who have been granted *qualification* move on the next step and can now apply for MCF positions.

b) The “Tour de France”

Most MCF positions are opened, advertised and filled during one centralised campaign which runs from March to June. The rest are known as *postes au fil de l'eau* – literally, run-of river positions – but the requirements and selection process are no different, save regarding the calendar: a *poste au fil de l'eau* can be open at any time during the year. Open positions of either type are advertised with more-or-less broadly defined research and teaching profiles, and every person who has been cleared by the relevant section of the CNU can apply.

The application folder for an MCF position is broadly similar to that prepared for the *qualification*, except that there is no limit to the number of publications that can be submitted. The applications are reviewed by each university's *ad hoc* selection committee,¹⁸ which is made-up of both internal and external members,¹⁹ and in principle must include at least 40% of persons of either gender.²⁰ The committee conducts an initial screening that again involves the appointment of two rapporteurs, and short-listed candidates are then invited for a 10- to 20-minute-long interview. The committee sits on a single day, with the outcome (a list of ranked candidates) usually disclosed informally in the evening – the official confirmation requires an approval by various university bodies. The interview format is extremely flexible, so that candidates can be asked about their publications (in particular their thesis), topical issues, general issues facing academics, or how they would approach having to lecture on a particular topic. Within the framework of the centralised session, the interviews for the various positions take place over just a few weeks. As it is in the logic of the system that candidates are invited for several interviews, they end up criss-crossing the country throughout this period, hence the name “Tour de France”.

Even though the requirement that committees be made up of at least 50% of external members is aimed at discouraging localism, that is to say the

¹⁷ Art. 24, §2 Décret n° 84-431 fixant les dispositions statutaires communes applicables aux enseignants-chercheurs et portant statut particulier du corps des professeurs des universités et du corps des maîtres de conférences. The rejection is challenged in front of Group 01, which comprises Sections 01 to 06 of the CNU. For such a claim to be admissible, the candidate must have received two consecutive rejections.

¹⁸ See for instance the Ministry's guidelines for the selection committee, which applies to both MCF and professor positions, at <https://www.galaxie.enseignementsup-recherche.gouv.fr/ensup/comite_selection/guideCOMSEC2018.pdf>.

¹⁹ Art. L.952-6-1, §2 Code de l'éducation.

²⁰ Arts. 9 and 9-1 Décret n° 84-431.

preferential hiring of local candidates, the overall process does not escape criticism in this respect – the very high proportion of successful candidates who hold a PhD from the university which hires them is very telling, and it explains to a significant extent the degree of support retained by the *agrégation*.²¹

2. Becoming a full professor

There are three paths to a professorship in France. The first is the competitive exam known as *l'agrégation du supérieur* (I.2.a)), which offers successful candidates a quick path to a professorship. It coexists with two other, less direct paths, in which the CNU plays a key role (I.2.b)).

a) The *agrégation du supérieur*

The *agrégation du supérieur* (hereafter: *agrégation*)²² is one of the various centralised competitive exams, or *concours*, that France is known for. In the six fields where it exists,²³ it is held every other year,²⁴ and it guarantees successful candidates, no more than 10–15% of the original batch,²⁵ a professorship. The (maximum) number of successful candidates, indeed, is determined by the number of positions opened by the various French universities. The *concours* for all legal areas are organised in broadly similar ways, and for the sake of brevity the focus will hereafter be on the *agrégation* for private law and criminal law (hereafter: private law), a combination which in itself might be surprising to readers from other jurisdictions.

²¹ See part I.2.a) below.

²² It is important to specify that this *agrégation* is *du supérieur* because most *agrégations* in France (in history, philosophy, mathematics ...) are *du secondaire*, that is to say they lead to positions as high school teachers.

²³ According to art. 2 Arrêté relatif à l'organisation générale du premier concours d'agrégation pour le recrutement des professeurs des universités des disciplines juridiques, politiques, économiques et de gestion of 13 February 1986, these are private law and criminal law, public law, legal history, political science, economics, and management science. In economics, the *concours* is currently paused for lack of candidates, no doubt because in that field promising French economists can easily find attractive opportunities abroad and can thus bypass the *agrégation*, which seems unlikely to be revived, see <https://cache.media.enseignementsup-recherche.gouv.fr/file/Personnels_enseignants_chercheurs/58/1/Note_sur_le_site_arret_du_concours_1157581.pdf>.

²⁴ In practice, the *agrégations* for private law and criminal law, political science, and management science are held the same year, and those for public law, legal history, and – if it were not paused – economics, the following year.

²⁵ In the case of the last *concours*, in 2019, there were 196 candidates, of which 26 were successful, a pass rate of 13.3%.

In a given *concours* year, all new professors will be selected by one *ad hoc* committee which comprises seven members: five professors of private law, a professor of either public law or legal history and a judge sitting on the Cour de cassation, the country's highest court for private law matters. The committee's president is appointed by the Ministry for Research, alternatively from a Paris university and from a university based outside the capital, and is a hugely influential figure, most notably because presidents enjoy a considerable degree of freedom in selecting the other members of the committee.²⁶ In so doing however, they must endeavour to achieve a fair representation of the country's law professors in terms of both geography and the various sub-fields of private law, as well as equal representation of women and men.

The *concours* is made up of four oral tests²⁷ which are staged over the whole academic year, because of the significant number of candidates in private law. The first two tests are eliminatory, and passing the second test,²⁸ in particular, is considered to be an achievement in its own right even if the candidate is ultimately unsuccessful. In the run-up to the *agrégation*, the candidates will provide the members of the committee with a CV and a summary of their research activity. For every candidate, once again, two members of the committee will be appointed as rapporteurs. They will receive a small number of publications chosen by the candidate,²⁹ which will normally include the PhD thesis, and they will draft a report which will be presented to the full committee before a discussion takes place with the candidate. That first discussion constitutes the first test or *épreuve sur travaux*. In the second test, or *leçon de commentaire*, every candidate is given eight hours in a library to prepare a half-hour comment on a case, legal provision or piece of legal writing. Every candidate draws his or her own topic, but all of the topics must, whatever the area of expertise of the candidates, relate to the law of obligations, the law of evidence or the theory of the sources of the law. The third test is the famous *leçon de vingt-quatre heures*, officially *leçon après une préparation libre*, and it is the one which, understandably, has gained

²⁶ See art. 49-2, § 4 Décret n° 84-431.

²⁷ See arts. 7 and 10 Arrêté of 13 February 1986.

²⁸ These candidates are referred to as *admissibles*. The larger contingent of candidates who have passed the first test are referred to as *sous-admissibles*.

²⁹ The precise number is set by the committee at the beginning of the *concours*. More generally, the committee has significant flexibility in shaping the specifics of the exam for everything that is not expressly set by the statutory rules. It also decides whether the first test's discussion will be preceded by an opening statement by the candidate, or whether the candidates' presentations for the second and fourth tests will be followed by a discussion, or the exact parameters of the various specialty areas the candidates can choose for the fourth test. For a recent example, see the Rules of procedures of the last *agrégation* in private law, at <https://cache.media.enseignementsup-recherche.gouv.fr/file/Personnels_enseignants_chercheurs/01/0/Reglement_du_concours_01_18_juin_Signe_969010.pdf>.

the highest profile and become a symbol of the whole *concours*.³⁰ As the name suggests, it involves the candidate being given twenty-four hours to prepare, with the help of a group of colleagues,³¹ a forty-five minute presentation on a topic which usually is a single word, but which can also be an author, or an introductory or conclusive class to a course dedicated to an emerging area of the law.³² All relevant aspects of private law and criminal law must be covered, or at least alluded to. The presentation is followed by a fifteen-minute discussion, which is particularly gruelling given that the candidate will usually not have slept at all. For the last test, the *leçon de spécialité*, candidates spend eight hours in a library preparing a half-hour *leçon* on an essay question related to their area of expertise.³³ For the final three tests, sticking to one's allotted time (as a rule of thumb, within fifteen *seconds*) is of the utmost importance, as is the structure chosen for the lecture – in most cases, the famed “two parts, two sub-parts” binary structure.³⁴

The *concours*, then, has several salient features. Through the second and third tests particularly, it requires candidates, after years spent specialising during their PhD projects, to revert to being generalists. The emphasis on oral examination, through the *leçon* format, rewards teaching skills. Finally, and most notably, the *concours* is avowedly a “career accelerator”, in that it allows promising but relatively young and sometimes unproven academics – typically in their early-to-mid thirties, but sometimes younger – to become professors. In this respect, the *agrégation* follows a logic that runs contrary to the “publish or perish” philosophy, to the extent that it is not unheard of for

³⁰ See the vivid description of a *leçon de 24 heures* by Stefan Vogenauer, written as an immersive experience: *Stefan Vogenauer*, Paths to the Chair – The French Experience, The *concours* and the *leçon de vingt-quatre heures*, ZEuP 12 (2004) 218.

³¹ The only requirement is that no member of the group has passed an *agrégation du supérieur* themselves. In private law nowadays, the groups tend to comprise fifteen to thirty-five members.

³² For instance, the following topics were given over the course of the last *concours* in private law: Resilience, Change, Justification; Demogue; A Conclusion to a Course on the Renewal of the Sources of the Law – see <https://cache.media.enseignementsup-recherche.gouv.fr/file/Personnels_enseignants_chercheurs/38/0/SUJETS_3ME_EPREUVE_LECON_de_24_h_1112380.pdf>. Most of the lectures given by the successful candidates of the 2015 *concours* were later published; the resulting book gives a detailed sense of what the test entails. See: *Recueil de leçon de 24 heures, Agrégation de droit privé et de sciences criminelles 2015*, ed. by Corinne Saint-Alary Houin (2015).

³³ According to art. 10 Arrêté of 13 February 1986, the candidates must choose one of the following areas: commercial and business law; private international law; criminal law and procedure; civil procedure; labour law and social security law; legal philosophy; and civil law.

³⁴ On this obsession of the French law faculties for the “two-parts, two subparts” structure, see *Boris Barraud*, L'usage du plan en deux parties dans les facultés de droit françaises, RTD civ. 2015, 807, *Michel Vivant*, Le plan en deux parties ou de l'arpenage considéré comme un art, in: *Mélanges Pierre Catala* (2001) 969 and *Jérôme Bonnard*, Variations sur le plan en deux parties en usage dans nos Facultés de droit, LPA n° 122 (2012) 12.

candidates to be promoted with no “publications” other than an unpublished thesis.

At the end of the process, the committee ranks the successful candidates, and the new professors will choose their respective destinations in order of rank, the universities themselves having at this point no say in the matter. In other words, the candidate ranked first will make his or her choice among all the open positions, then the candidate ranked second will choose among the remaining positions, and so forth.

b) The other paths

Apart from the *agrégation*, two other paths which complement each other allow an MCF who has already spent some time in the academic world to become a professor. As these paths are more grounded in the local environments of individual universities, they enable the overall system to strike a balance between the highly centralised *agrégation* and the autonomy of universities to hire their preferred candidates. The sustainability of this balance is ensured by a quota rule which provides that at least half of the available positions at a given university must be allocated to the *agrégation* and the rest divided between the two alternative paths.³⁵ While the *agrégation* remains the main path to a professorship, and the quickest, it is viewed as important that other possibilities exist for the benefit of researchers who have not adapted to the strict and formal framework of the *agrégation*.³⁶ In the case of the first of these alternative paths, a candidate applies to a specific position which has been opened by an university which is, very often but not necessarily, their home university. In the second case, which mirrors the process implemented for MCFs that has already been described, candidates apply for a *qualification*, that is to say a four-year permission to apply for future professorship openings. In both cases, the CNU plays a key role by checking that the candidate fulfils the requirements for a promotion.

The first and older process, at least in law, is known as the “long way” (*voie longue*) and is regulated by article 46,3° of the decree of 6 June 1984.³⁷ This provision sets out the conditions under which a candidate can become a professor through the *voie longue*. First, that person has to have been an MCF for at least five years and, more generally, he or she must have been working for at least ten years in a public higher education establishment. Through

³⁵ Bulletin officiel de l'Éducation nationale n° 20 of 14 May 2015. In French, this is known as the *contingement* rule.

³⁶ Muriel Fabre-Magnan, Radiographie de l'agrégation – Les résultats du concours d'agrégation externe de droit privé et de sciences criminelles depuis 1968, in: Liber amicorum Philippe Malaurie (2005) 219, 234; *idem*, La réforme du statut des universitaires, D. 2014, 2232.

³⁷ Décret n° 84-431.

this criterion, experience as an academic is taken into account. Secondly, the publications of the candidate are assessed. Beyond a PhD, he or she must have obtained the authorisation to supervise research (HDR) or an equivalent. The reports published every year by the CNU on these recruitments show that this body takes into account the number of publications, their quality and their regularity, but also more broadly the commitment of the candidate to academic life, both as a researcher and a teacher. This commitment will be evidenced, *inter alia*, by the organisation of conferences and symposia, the supervision of theses and other research work, the management of a research group, but also the variety and number of classes taught, including invitations to teach abroad and any educational initiatives taken.³⁸ If the CNU considers that the candidate fulfils these requirements, he or she will obtain the professorship they applied for. Such a recruitment process gives universities some leeway to promote academics already in post who have demonstrated their ability over the years, though this localism is admittedly balanced to some extent by the evaluation of the CNU.

The second, more recent³⁹ and arguably less successful alternative to the *agrégation* is governed by article 46,1° of the Decree of 6 June 1984. This provision may have enacted a new path to a professorship in law, but it actually merely extended to law the usual procedure found in all the other academic fields that did not have the *agrégation*. More than a genuine innovation then, it was an attempt to harmonise the recruitment processes across the various academic fields. This new path replaces the former *agrégation interne*, which was repealed in 2014⁴⁰ and which used to be a national competitive examination similar to the previously described *agrégation*,⁴¹ but one open only to candidates who had been teaching for at least ten years at a university. Its underlying idea was to evaluate these candidates on their previous experience as MCFs rather than on their skills at writing and presenting a *leçon*.⁴² The process implemented by article 46,1° is somewhat inspired by the

³⁸ CNU Section 01, Compte-rendu de la session de recrutement, 29 June 2019, <https://conseil-national-des-universites.fr/data/document/3420/4266/Public/Rapports%20d%20activit%C3%A9%202019/CNU%20Section%2001%20CR%20session%20de%20recrutement%20PR%2046_3%202019.pdf>.

³⁹ It was introduced in 2014 by another decree which reformed various recruitment processes in different areas of higher education. See Décret n° 2014-997, J.O. n° 0204 of 4 September 2014, text n° 6.

⁴⁰ It was repealed by the same decree that introduced art. 46,1°.

⁴¹ The *agrégation* which continues to exist was then, following the usual terminology of the French *concours*, referred to as the *agrégation externe*. The two *agrégations*, or so it was hoped, offered the same guarantees of equality and fairness, see *Fabre-Magnan*, *Radiographie* (n. 36) 234; *idem*, D. 2014, 2232.

⁴² Instead of the traditional *leçons* of the *agrégation*, which reward the capacity of the candidates to gather relevant information in order to build a highly structured presentation on a sometimes very technical topic, the tests of the *agrégation interne* were designed to assess the scientific value of the candidates and also their commitment to the university. See *Jean Pélissier*,

same philosophy, in the sense that it is very centralised, but this time it is conducted by the CNU. Another difference with respect to the old regime is that the new process does not set a minimum amount of time that candidates must have spent working in academia. It is therefore open to candidates who do not have a very long experience as academics but who have nevertheless already proven that they have all the qualities expected of a professor. The assessment by the CNU is strictly based on the quality of the candidates' publications and on their commitment to academic life.⁴³ As the CNU puts it in its report for 2019, the 46,1° and 46,3° processes must be distinguished, the latter being more retrospective while the former is more prospective, and therefore more of a wager on the future of an academic still at an early stage of his or her career.⁴⁴ But the main difference between the two is that the 46,1° process is less favourable to localism than its 46,3° relative, inasmuch as its outcome is only a declaration that the candidate fulfils all the requirements to be a professor, rather than the granting of a professorship at a specific university. Like the *qualification* to become MCF, this *qualification* only allows the successful candidate to apply for positions which will be opened by universities over the next four years.⁴⁵ According to the CNU's 2019 report, 12 candidates out of the 37 who were granted the *qualification* in 2016, 2017 and 2018 had yet to obtain a position. The three from 2016 are now facing the risk of losing the benefit of their *qualification*.⁴⁶

The 46,1° and 46,3° paths are thus an indispensable alternative to the *agrégation*, which in law nevertheless remains arguably the preferable way to become a professor because of both the quota rule and because being an *agrégé* confers added prestige.

II. How a career unfolds

A description of how careers develop, once a permanent position has been obtained, involves looking both inside (II.1.) and outside academia (II.2.).

Jacques Héron, un honnête homme, in: *Mélanges dédiés à la mémoire du doyen Jacques Héron* (2008) 405.

⁴³ CNU Section 01, Compte-rendu de la session de qualification aux fonctions de Professeur d'Université, February 2019, <https://conseil-national-des-universites.fr/data/document/3420/4266/Public/Rapports%20d%20activit%C3%A9%202019/CNU%20Section%201%20CR%20session%20de%20qualification%20PR%2046_1%202019.pdf>.

⁴⁴ CNU Section 01, Compte-rendu (n. 43).

⁴⁵ Naturally, it cannot be excluded that a significant proportion of the 46,1° *qualifiés* will in fact be hired by their current universities.

⁴⁶ CNU Section 01, Compte-rendu (n. 43).

1. Inside academia

Academics who hold permanent positions in France, either as MCFs or professors, enjoy a considerable degree of freedom. In particular, they are not prescribed publications targets and even though they are (since 2016) supposed to be subject to individual evaluation by the CNU, this does not (yet?) seem to have been translated into practice.⁴⁷ No research funding is automatically attached to the positions themselves, but funding is available through research centres and the call for projects of the national agency for research (Agence nationale de la recherche, ANR). Additionally, there is no “chair” system, which contributes to a somewhat individualistic culture of research: academics who teach the faculty’s core subjects can rely on teaching assistants, but there are no research assistants. As their seniority within a faculty increases, academics can expect to gain more control over what subjects they teach. They are also expected to shoulder part of the administrative work of the faculty.

Horizontal mobility, from one university to another for identical positions, is possible for both professors and MCFs, though it should be said that in practice it is easier for the former. In this respect, the French system is not particularly unusual: universities can fill open MCF positions through transfers, that is to say by bringing in an MCF from another university rather than hiring a candidate straight out of the *qualification*. This process is overseen by the *ad hoc* selection committees which have already been described.⁴⁸ Transfers for professors work in a broadly similar way, with the exception that only professors can sit on selection committees.⁴⁹ For both types of positions, various factors are taken into account: publications, supervision of PhD theses and administrative duties taken up by the candidate. For professorships, it cannot be excluded that the rank at the *agrégation* also comes into play.

2. Outside academia

Outside academia, the career of academics can grow in different directions, which include notably the development of the law, in both its statutory and judge-made dimensions, and legal practice.

MCFs and professors can be involved, in an official capacity, in the development of statutory law in different ways. Academics often sit on the commissions which can be set up by Ministries in view of the reform of a specific

⁴⁷ See part III.1.a) below. Furthermore, the Haut Conseil de l'évaluation de la recherche et de l'enseignement supérieur (Hcéres), an independent administrative authority, evaluates research institutions on various administrative levels.

⁴⁸ See part I.1.b) above, and art. 9, § 1 Décret n° 84-431.

⁴⁹ See art. 9, § 11 Décret n° 84-431, *a contrario*.

area of the law.⁵⁰ This happened, for instance, in the case of the recent reforms of the law of contract, the general regime of obligations and proof of obligations. Several professors were involved, to varying degrees, in the drafting of the text, even though the project did not escape criticism for being too “ministerial” as opposed to academic.⁵¹ The influence of academics on the making of the law is even more important when one person in particular, or a group of academics, is asked to lead a reform because of their expertise in the field. The most famous such case is that of Jean Carbonnier, who during the 1960s and 1970s⁵² was entrusted with reforming and modernising most of family law by another law professor, Jean Foyer, who at the time was Minister of Justice and who is credited with giving the impetus necessary for a reform.⁵³ A more recent example is provided by the Grimaldi commission on securities law, which was set up at the request of the Ministry of Justice.⁵⁴

Academics can also influence the decision-making of the courts, either indirectly when their writings inspire individual decisions,⁵⁵ or directly if they are appointed as full-time or part-time judges. One of the most famous examples in private law is André Ponsard, a professor who sat on the Cour de cassation for 16 years, including one year as president of the Court’s first civil chamber, and who profoundly influenced the private law of his time, particularly in private international law.⁵⁶ Even the reputedly hermetic separation between public and private law does not always hold in this respect, as recently evidenced by the appointment of Bénédicte Fauvarque-Cosson, a private law professor and renowned comparatist, to the administrative Supreme Court, the Conseil d’État.⁵⁷

Finally, academics are very often involved in legal practice, more or less visibly depending on the type of activity they choose to engage in. This

⁵⁰ The influence exerted by academics is particularly direct when Parliament, according to article 38 of the Constitution, enables the government to enact a reform through a governmental decree (*Ordonnance*).

⁵¹ *François Ancel / Bénédicte Fauvarque-Cosson / Juliette Gest, Aux sources de la réforme du droit des contrats*, D. 2017, 5.

⁵² These laws are therefore also referred to as the “Carbonnier laws”. See *Hulgues Fulchiron / Philippe Malaurie, Évolution du droit français de la famille*, Defrénois 2009, 1347.

⁵³ See: Jean Foyer auteur et législateur – *Leges tulit, jura docuit* – *Écrits en hommage à Jean Foyer* (1997).

⁵⁴ *Michel Grimaldi / Denis Mazeaud / Philippe Dupichot, Présentation d’un avant-projet de réforme du droit des sûretés*, D. 2017, 1717.

⁵⁵ This influence, while sometimes undeniable at the stage of drafting or in internal documents of the Court, remains unobtrusive because French courts do not quote academic writing in their decisions. On this issue, see *Mitchel Lasser, Judicial (Self-)Portraits: Judicial Discourse in the French Legal System*, *Yale Law Journal* 1995, 1325.

⁵⁶ See: *La Cour de cassation, l’Université et le droit* – André Ponsard, un Professeur de droit à la Cour de cassation, *Études en l’honneur d’André Ponsard* (2003).

⁵⁷ Décret of 19 September 2018, J.O. n° 0217 of 20 September 2018, text n° 40.

tendency is encouraged by the fact that academics can become qualified lawyers fairly easily, thanks to the shortcuts that exist in favour of PhDs and professors. With a PhD in law, it is possible to enter the professional school for lawyers, the *École de formation du barreau* (EFB), without having to pass its national entrance examination. The merit of this pathway is regularly questioned by both lawyers and politicians, which in time might lead to its disappearance.⁵⁸ The shortcut for professors is even more drastic, as they can register with the bar without first passing through the EFB. As a result, many academics, MCFs and professors alike, choose to maintain regular activity in private practice. Some of them have become partners in well-established law firms alongside their work at a university, others act as consultants for law firms or private parties, or as arbitrators.⁵⁹ Some academics even make the radical choice of abandoning the academic title of professor in order to dedicate themselves fully to private practice. One of the most famous examples is Alain Bénabent, an *Avocat aux conseils*, that is to say a barrister before the Cour de cassation and the Conseil d'État, who abandoned his professorship but is still considered to be an eminent contributor to French scholarship.⁶⁰

III. Critical assessment

A critical assessment of French academic career paths in law can be conducted in two steps. First, the controversies they give rise to must be summarised (III.1.). Then, and through this prism, their future perspectives can be sketched (III.2.).

⁵⁸ Recently, the 2016 reform of doctoral studies almost went ahead with the elimination of this shortcut. See *Daniel Tricot*, *Ne touchez pas à la "passerelle" des docteurs en droit*, *Dalloz Actualité*, 14 April 2016.

⁵⁹ Even though it would be excessive to say that academics who work in private practice trumpet that fact, it would similarly be inaccurate to claim that they hide it. For instance, references to the private practice of the dedicatees can often be found in "Mélanges", or essays in honour of retiring professors. See, for example, the biographies in: *Mélanges en l'honneur du Professeur Claude Lucas de Leyssac* (2018) and in: *Le droit des affaires à la confluence de la théorie et de la pratique – Mélanges en l'honneur du Professeur Paul Le Cannu* (2014); and the article by *Thomas Clay*, *Le coarbitre*, in: *Mélanges en l'honneur du Professeur Pierre Mayer* (2015) 133 ff.

⁶⁰ Besides his articles, his books on the law of contract are still updated regularly and are regarded as a benchmark of French contract law. See *Alain Bénabent*, *Droit des obligations*¹⁸ (2019) and *idem*, *Droit des contrats spéciaux civils et commerciaux*¹³ (2019).

1. Controversies

It is apparent from the picture presented in the previous part (II.) that the defining feature of the French system is its centralisation. It should come as no surprise, then, to find its two main markers, the CNU (III.1.a)) and the *agrégation* (III.1.b)), as the focal points of the controversies. In many ways, the debates that will now be described can be framed as a critique of centralisation. It should however be kept in mind that, in the words of Oscar Wilde, “the truth is rarely pure and never simple”;⁶¹ in the French context, the alternatives to centralisation are in no way idyllic.

a) The Conseil national des universités

It is not a big stretch to characterise the CNU as virtually omnipotent when it comes to academic careers in France. Beyond being responsible for selecting from the year’s intake of doctors those who will be able to apply for a position as MCF, and for two out of three avenues to a professorship,⁶² this institution was also given the power, in 2015, to evaluate every academic.⁶³ If it were not for the *agrégation*, the entire career of academics would lie in the hands of the CNU.⁶⁴ This pre-eminence can be and often is framed as a criticism in itself, but it also provides the background to three other points of criticism.

First, the over-centralised character of the *qualification*, the promotion to a professorship and the evaluation of academics is perceived by many as running contrary to the autonomy of universities. This principle of autonomy of universities regarding the recruitment of their staff was laid down by the Conseil d’État in 1988,⁶⁵ and in 2007 it was reaffirmed in the “LRU law” (Loi relative aux libertés et responsabilités des universités): from 1 January 2013, universities are meant to be autonomous with respect to the manage-

⁶¹ Oscar Wilde, *The Importance of Being Earnest* (1956) 13.

⁶² See part I. above.

⁶³ This new prerogative was granted to the CNU by Décret n° 2014-997 and confirmed in Décret n° 2015-1102 of 31 August 2015, J.O. n° 0202 of 2 September 2015, p.15502, text n° 11. This new regime was meant to come into effect in 2016, but its impact remains uncertain as it is not mentioned in any of the CNU’s annual reports. For a detailed presentation of the role and prerogatives of the CNU, see *Fabrice Melleray*, *Les attributions du Conseil national des universités*, AJDA 2015, 928.

⁶⁴ In 2009, the then Minister for Higher Education and Scientific Research, Valérie Pécresse, explicitly stated: “I want the CNU to be, at the same time, the reference body for academics, the body that grants *qualification* to young doctors and decides whether they should be allowed to pursue an academic career”. See *François Garçon*, *Le dernier verrou – En finir avec le Conseil national des universités* (2012) 26.

⁶⁵ CE 2 mars 1988, *Fédération nationale des syndicats autonomes de l’enseignement supérieur et de la recherche*, RFDA 1998, 615.

ment of their budget and their human resources.⁶⁶ Yet a university cannot hire as MCF a candidate who lacks the required *qualification*, nor as professor, through the 46,1° or 46,3° paths, an MCF who fails to get the CNU's blessing. This explains why the Conférence des Présidents d'Universités (CPU), an institution that brings together the presidents of the various French universities, has regularly called for the elimination of the *qualification* and the end of the CNU's monopolistic power over promotions.⁶⁷ In addition, it is sometimes argued that the monopolisation by the CNU of the power to evaluate academics prevents universities from developing a genuine and self-devised "culture of evaluation", an approach that to its proponents appears more legitimate.⁶⁸

The lack of legitimacy of the CNU to recruit and evaluate academics is indeed the second flaw that is often highlighted by critics, who single out its composition. As previously described, two-thirds of the CNU's members are elected by their peers through a process based on closed, union-backed lists. As a result, the CNU is often described as a "political" rather than a "scientific" institution, with the implication that its members might be tempted to approach the selection of their peers through the *qualification* in terms that are not exclusively based on scientific, but also on political criteria.⁶⁹

This distrust is exacerbated by what has been described as the "balkanisation" of the CNU, that is to say its division into as many sections as there are officially recognised academic disciplines.⁷⁰ The sections do not really communicate with each other, which makes a proper assessment of transdisciplinary research difficult.⁷¹ In law, there are worries that the splintering of the CNU between private law, public law and legal history sections discourages academics from adding historical perspectives to publications in private law or public law, or from researching topics at the intersection of public and private law, thereby hindering the spread of innovative approaches and the study of new areas. To put it bluntly, the careers of candidates who have been

⁶⁶ Arts. 18 and 19 Loi n° 2007-1199.

⁶⁷ See the statement released by the CPU on 21 May 2019, especially point 3, <<http://www.cpu.fr/actualite/la-cpu-pour-une-approche-proactive-de-lautonomie/>>.

⁶⁸ Fabien Dworzak, Quelles réformes pour l'Université?, *The Conversation*, 24 March 2016, <<https://theconversation.com/quelles-reformes-pour-luniversite-56793>>.

⁶⁹ Charles Fortier, Recrutement universitaire: accélérer le changement, *AJFP* 2015, 287; Antoine Compagnon, Examen de rattrapage, *Le Débat*, Sept-oct 2009, n° 156, p.167, 174; Garçon, *Le dernier verrou* (n. 64) 36.

⁷⁰ 75 in total. See Dylan Martin-Lapoirie / Georges El Haddad et al., Les universités en France et leurs sections disciplinaires: liberté ou contrainte scientifique?, *The Conversation*, 17 June 2018, <<https://theconversation.com/les-universites-en-france-et-leurs-sections-disciplinaires-liberte-ou-contrainte-scientifique-97843>>.

⁷¹ Olivier Beaud / Alain Caillé et al., Refonder l'Université – Pourquoi l'enseignement supérieur reste à reconstruire (2010) 173f.; Fortier, *AJFP* 2015, 287. This is widely regarded as unfortunate, given the current vogue for transdisciplinary research, in France as elsewhere.

thinking out of the box, or who have unusual profiles, could be adversely affected under the current system.⁷²

Last but not least, the process of *qualification* in itself is often characterised as too opaque, with the evaluation criteria singled out for particular criticism. This is the perhaps predictable outcome of the statutory requirements leaving room for discretion, which also explains why the criteria vary from one section to another.⁷³

Despite this multi-layered criticism, the CNU and its current powers retain significant support within the academic community. It can be argued that, especially at MCF level, the *qualification* does not excessively limit the freedom of universities when it comes to hiring permanent staff. Furthermore, there are fears that the suppression of the CNU, or at least of the *qualification*, would reinforce the localism which is already at play in the present system and which is often described as a form of “academic clientelism”.⁷⁴ Free from the CNU’s interference, and absent the introduction of alternative safeguards, universities might be emboldened to hire almost exclusively their own PhD graduates.

b) The *agrégation*

The *agrégation* is criticised on several counts: first for the obstacle it represents to the autonomy of the universities, but also, and more importantly, for failing to provide a level playing field from the perspectives of geography and gender. This, naturally, is paradoxical for a national examination which above all else aims to ensure fairness and equal opportunities between candidates.

First, it is obvious that the *agrégation* does not square with the principle of autonomy of universities regarding the recruitment of their academic staff. Indeed, once a university has decided to open a position for the *concours*, the outcome is completely out of its hands. As was already explained,⁷⁵ all the new professors will be selected and ranked by the *ad hoc* committee and, once the list of open positions is made known to the laureates, they will make their choice in order of rank. This means that the needs of the various universities, especially when it comes to teaching, may not be a paramount

⁷² Serge Sur, Pas de place pour les “relations internationales” dans l’université, *Le Monde*, 22 June 2011, <https://www.lemonde.fr/idees/article/2011/06/22/pas-de-place-pour-les-relations-internationales-dans-l-universite_1538916_3232.html>.

⁷³ Fortier, *AJFP* 2015, 287.

⁷⁴ Olivier Godechot / Alexandra Louvet, Le localisme dans le monde académique: un essai d’évaluation, *La vie des idées*, 22 April 2008, <<https://laviedesidees.fr/Le-localisme-dans-le-monde.html>>; Olivier Beaud, La réforme du recrutement ou l’aggravation des tares du systèmes français, *Cités* 2012/2, 126.

⁷⁵ See part I.2. above.

consideration. To make matters worse, most of the new *agrégés* come from Paris, as will be explained shortly, and they sometimes tend to prioritise geography over the compatibility between their profile and the needs of the various universities they can choose from. In practice, this might mean picking a university not too far from the capital, in the hope that they will not have to wait too long for a call back to their university of origin.

This leads to the main criticism that can be levelled at the *agrégation*: in contradiction to its purpose, the *concours* is deemed not to be equal enough. A quick look at the statistics of its last five editions in private law, from 2011 to 2019, can help test the validity of this criticism and, in the event it should hold up to scrutiny, assess the extent of the problem. To that end, the focus of the enquiry will be on the criteria that can be objectively assessed: the gender and university of origin⁷⁶ of the successful candidates.

When it comes to gender, a survey of the last five *concours* shows an over-representation of men: of 150 candidates who passed the *concours*, 96 were men, and 54 were women, which translates into 64% male and 36% female.⁷⁷ But the true extent of the imbalance can be measured only if these results are compared with the percentage of men and women who obtained an MCF *qualification* from the CNU. Out of 262 *qualifiés* from 2016 to 2019, 145 were women, and 117 were men, that is to say 55.3% female and 44.7% male.⁷⁸ From the *qualification* to the *agrégation*, the outcome is then clearly reversed. The picture becomes, however, more complex if one looks at each *concours* separately: some led to a very balanced result, one to a slight majority of women,⁷⁹ and a few to a large majority of men. The last *concours* in that respect is giving rise to concern (19.2% female and 80.8% male), a turn of events which did not go unnoticed in the academic world.⁸⁰ This sudden regression is particularly disappointing in the light of what had been previously described as a trend towards parity starting from the end of the 1990s.⁸¹ A hugely significant factor, when it comes to equal opportunities between

⁷⁶ In this context, the university of origin will be taken to mean the university where the candidate defended his or her PhD thesis.

⁷⁷ See the decrees announcing the nominations and placements of the new *agrégés* in 2011, 2013, 2015, 2017 and 2019: Décret of 1 August 2011, J.O. n° 0180 of 5 August 2011, n° 102; Décret of 5 August 2013, J.O. n° 0182 of 7 August 2013, n° 71; Décret of 25 August 2015, J.O. n° 0197 of 27 August 2015, n° 49; Décret of 28 August 2017, J.O. n° 0202 of 30 August 2017, n° 61; Décret of 1 September 2019, J.O. n° 0204 of 3 September 2019, n° 44.

⁷⁸ See the reports published by Section 01 of the CNU from 2016 to 2019, <<https://www.conseil-national-des-universites.fr/cnu/#/entite/entiteName/CNU/idChild/0>>.

⁷⁹ For the 2010–2011 *concours*, the result was 44.4% female and 55.6% male, and for the 2014–2015 *concours*, it was 53.6% female and 46.4% male. It is worth mentioning that the President of the 2014–2015 committee was, for the first time, a woman, Professor Corinne Saint-Alary-Houin.

⁸⁰ *Anne Debet / Nathalie Martial-Braz*, *Où sont les femmes? – À propos des résultats du dernier concours d'agrégation*, D. 2019, 1489.

⁸¹ *Fabre-Magnan*, *Radiographie* (n. 36) 217 f.

men and women in the *agrégation*, is the university of origin of the successful female candidates. If the figures relating to gender and to the university of origin are combined, it becomes obvious that for a woman to have a good chance of passing the *concours*, she must come from either Panthéon-Sorbonne (Paris 1) University or from Panthéon-Assas (Paris 2) University: in 2013 and 2015, around 80% of the women who were *agrégées* came from one of these two universities.⁸²

Indeed, the *agrégation* is often decried as a Parisian-friendly examination, to the detriment of the candidates from outside the capital, the “Provinciaux”.⁸³ Again, a quick look at the statistics of the last five *concours* helps take the measure of the problem: in the case of all *concours* save one⁸⁴ between 2011 to 2019, the proportion of *agrégés* coming from Paris 1 and Paris 2 remained above 50% and was sometimes as high as 70%,⁸⁵ while the proportion of *agrégés* coming from Parisian universities in general was sometimes as high as 80%.⁸⁶ As various observers have highlighted, this imbalance has seen little change since the 1900s.⁸⁷ Again, a comparison with the figures of the MCF *qualification* is striking: from 2016 to 2019, a majority of successful candidates defended their PhD theses in universities outside Paris.

It is difficult to provide a comprehensive explanation of these results, especially because while the reasons to which a geographic disparity can be attributed are easy to understand, the factors leading to a gender disparity remain to a certain degree elusive. It may be that, in part, the *concours* merely reflects the gender inequalities that exist within French society at large: taking the *agrégation* requires a considerable investment of time and energy, which may be more of a challenge for female candidates who, statistically speaking, still take upon themselves a greater share of housework, especially in the presence of children.⁸⁸ It could also be that the exclusively oral nature

⁸² 77.8% in 2013 and 80% in 2015. In 2017, 66.7% of women who passed were coming from Paris 1 or 2.

⁸³ Even those who staunchly support the *agrégation* and the *leçon de 24 heures* accept this criticism, see Michel Grimaldi, *Pour que vive le concours d'agrégation en droit!*, D. 2014, 152; Jean-François Cesaro / Pierre-Yves Gautier et al., *Pour la leçon d'agrégation en 24 heures*, D. 2004, 427.

⁸⁴ In 2011, only 36.1% of the *agrégés* came from Paris 1 and 2, and 41.7% from Paris in general.

⁸⁵ The proportion of successful candidates coming from Paris 1 and 2 reads: 56.7% in 2013, 71.4% in 2015, 70% in 2017 and 50.6% in 2019.

⁸⁶ In 2015 and 2017, 78.6% and 80% respectively of the *agrégés* came from a Parisian university. It is interesting that the *concours* of 2015 was the most equal of those surveyed as far as gender is concerned (53.6% of women and 46.4% of men), but one of the more imbalanced regarding the Paris / Province ratio.

⁸⁷ Fabre-Magnan, *Radiographie* (n. 36) 226 f.

⁸⁸ Debet / Martial-Braz, D. 2019, 1489. The authors of a recently published interdisciplinary study point out that men are more likely than women to take the *agrégation* again following one or several unsuccessful attempts. This would appear to be highly significant, given that only a

of the *concours* makes it vulnerable to the sort of bias which leads to women teachers being evaluated more severely than their male counterparts, and in a manner not correlating to their students' exam results.⁸⁹ By contrast, the reasons for a geographic inequality have been repeatedly highlighted, and they have to do with both the *agrégation* in general and the *leçon de 24 heures* more specifically. In itself, the *concours d'agrégation* is deeply rooted in what one might call the culture or tradition of Parisian universities, especially Paris 1 and 2. From the very beginning of their PhDs, young academics from these universities are accustomed to the idea that being an MCF is only a temporary situation, the ultimate goal being the *agrégation*.⁹⁰ Additionally, they are often given early glimpses into the exam by contributing to the preparation of the *leçons de 24 heures* of more senior colleagues. Finally, the *concours* makes use of buildings and libraries from Paris 1 and 2 which Parisian candidates are familiar with. In a nutshell, they are taking the exam "at home".⁹¹ But the most striking inequality lies in the *leçon de 24 heures* itself.⁹² Gathering a group of colleagues with a wide array of expertise is considerably easier for candidates who come from big universities, and Paris 1 and 2 boast a particularly high number of academics who are very experienced in that highly specific exercise. Furthermore, the preparation for the *leçon* takes place in Paris, which means that a candidate from outside the capital will have to incur the considerable cost of transporting to Paris the group of colleagues assisting him or her and providing them with some form of accommodation.⁹³ The financial inequality is obvious, and has often been criticised,⁹⁴ but it has nonetheless not been ruled to be discriminatory by the Conseil d'État.⁹⁵

minority of successful candidates pass the *concours* at their first attempt. See *Lionel Andreu / Jeffrey Drouard / Bruno Karoubi*, Étude sur la réussite au concours d'agrégation externe et le recrutement des enseignants-chercheurs dans les matières juridiques, 10 February 2020, <https://www.researchgate.net/publication/339146864_Etude_sur_la_reussite_au_concours_d_agregation_externes_et_le_recrutement_des_enseignants-chercheurs_dans_les_matières_juridiques>.

⁸⁹ *Anne Boring*, Les évaluations des enseignements par les étudiants et les stéréotypes de genre, *The Conversation*, 26 January 2016, <<https://theconversation.com/les-evaluations-des-enseignements-par-les-etudiants-et-les-stereotypes-de-genre-53590>>.

⁹⁰ *Fabre-Magnan*, *Radiographie* (n. 36) 228.

⁹¹ *Christophe Fardet*, *Agrégation ou désagrégation ? – Entre deux maux ...*, *D.* 2017, 1538.

⁹² See part I.2.a) above.

⁹³ Furthermore, the Ministry only provides candidates with a space, in practice a library, for the duration of the working day. It is however up to each candidate to find a suitable venue for the nighttime period – an apartment, a couple of meeting rooms in a law firm or a hotel – and again this is easier for Parisian candidates.

⁹⁴ *Thierry Le Bars*, *Agrégation de droit privé et sciences criminelles : libres propos pour la suppression de "l'épreuve de 24 heures"*, *D.* 2004, 4; *Grimaldi*, *D.* 2014, 152; *Cesaro / Gautier et al.*, *D.* 2004, 427; *Didier Truchet*, *Réforme du statut des universitaires : l'agrégation et le reste – À propos du décret du 2 septembre 2014*, *JCP* 2014, 983.

⁹⁵ The Conseil d'État ruled, in 2002, that the *leçon de 24 heures* did not discriminate against

Despite this criticism – which, to a not insignificant extent, is a statement of fact –, the *concours* retains significant support in the French academic community. The *agrégation* is, indeed, often described using a Churchillian turn of phrase, as the worst system for selecting university professors, except for all the others. In this respect, the decisive element is that it is seen as the most effective safeguard against localism.⁹⁶ The unequal success of the 46,1° and 46,3° procedures⁹⁷ actually shows how entrenched this tendency is. The 46,1°, a procedure which finely balances centralisation (for the evaluation of the candidates) and autonomy (regarding the final recruitment), is less used than the 46,3°, which is more favourable to localism in that universities are able to pre-select their preferred candidates. Secondly, the *concours* is seen as a key component in the attractiveness of an academic career, something which in law is far from a given, in particular because of the much higher salaries that graduates would command should they opt to work in private practice. The *agrégation* makes obtaining a professorship a realistic possibility at a much younger age than in other countries, with all the ensuing consequences in terms of independence and freedom.⁹⁸ Last but not least, it can be argued that the admittedly constraining environment of the *agrégation* is paradoxically well-suited to the testing of skills that are necessary for both teaching and research. The emphasis on oral proficiency and pedagogy is meant to ensure the former, while the first, eliminatory test of the *concours* is centred around the evaluation of the candidates' research,⁹⁹ with a distinct emphasis on quality over quantity.¹⁰⁰

2. Future perspectives

The way academic careers are structured in France and the way they unfold have become intensely controversial of late. As a result, the system that has been described in this paper might undergo considerable upheaval in the

non-Parisian candidates regarding the constitution of the team. It did not however consider possible discrimination on the basis of the expenses incurred. See CE 18 October 2002, AJDA 2002, 1353.

⁹⁶ *Olivier Beaud*, *Libres propos sur le concours de l'agrégation du supérieur*, AJDA 2015, 920; *Fabre-Magnan*, D. 2014, 2232; *Truchet*, JCP 2014, 983.

⁹⁷ See part I.2.b) above.

⁹⁸ *Olivier Beaud / Rémy Libhaber*, *Où va l'Université? – Les chemins de la liberté*, JCP 2014, 1264; *Fabre-Magnan*, D. 2014, 2232; *Fardet*, D. 2017, 1538; *Le Bars*, D. 2004, 4.

⁹⁹ It is, then, excessive to claim that rhetorical skills alone can carry the day, even if mistakes or logical inconsistencies are made. For such an argument, see *Vogenauer*, ZEuP 12 (2004) 218.

¹⁰⁰ *Beaud*, AJDA 2015, 920; *Christian Mouly / Christian Atias*, *Faculty Recruitment in France*, Am.J.Comp.L. 41 (1993) 401–411.

near to medium-term. The CNU and the *agrégation*, the two cornerstones of the whole structure, appear likely to be reformed at least in some ways.

While few stakeholders espouse the radical view that the CNU should be eliminated,¹⁰¹ the *qualification* it conducts is regularly attacked by both academics¹⁰² and politicians. An attempt to eliminate it almost succeeded in 2013, when an amendment to a law reforming higher education and research¹⁰³ was adopted by Parliament, before finally being abandoned after a large number of academics, including the presidents of the various sections of the CNU, signed a petition opposing it.¹⁰⁴ But the idea did not die, and it was in fact one of Emmanuel Macron's campaign promises to get rid of this obstacle to the autonomy of universities in matters of recruitment.¹⁰⁵ He challenged the idea that the *qualification* was indispensable for containing localism, arguing that its existence has never been sufficient to avoid this pitfall. Conversely, he expressed the belief that universities could be trusted to recruit their staff through a fair and equal process, and he supported the creation of a recruitment channel which would bypass the CNU.¹⁰⁶ Such a reform was again debated in May 2019, and an amendment to the law reforming the civil service was proposed, but it was almost immediately withdrawn after causing an uproar.¹⁰⁷

In this somewhat factious atmosphere, several attempts have been made at working out a compromise which would see the *qualification* reformed without fully opening the door to localism. It has for instance been suggested to redesign or eliminate the *qualification*, so as to achieve full autonomy for the universities, while at the same time prohibiting the recruitment, for several years at least, of a candidate by his or her university of origin.¹⁰⁸ Another, less radical, proposal is to reform the *qualification* procedure in order to make it

¹⁰¹ *Garçon*, Le dernier verrou (n. 64).

¹⁰² Mostly represented in this fight by the CPU, see part III.1.a) above.

¹⁰³ Loi n° 2013-660 relative à l'enseignement supérieur et la recherche, J.O. n° 0169 of 23 July 2013, p. 1235, n° 2.

¹⁰⁴ Petition available at <<https://www.petitionenligne.com/cpcnu>>. It is worth mentioning that Frédérique Vidal, the current Minister for Higher Education and Research, who at the time was President of the University of Nice, strongly opposed this attempt at doing away with the *qualification*.

¹⁰⁵ See the speech made about higher education and research in Grenoble by the then presidential candidate on 14 April 2017, <<https://en-marche.fr/articles/discours/discours-inria-emmanuel-macron-enseignement-superieur-et-de-la-recherche>>.

¹⁰⁶ This position is shared by some academics, see *Fortier*, AJFP 2015, 287.

¹⁰⁷ *Camille Stromboni*, Le débat sur les enseignants-chercheurs est de retour, *Le Monde*, 3 June 2019, <https://www.lemonde.fr/societe/article/2019/06/03/le-debat-sur-le-recrute-ment-des-enseignants-chercheurs-est-de-retour_5470743_3224.html>.

¹⁰⁸ *Claudio Galderisi / André Guyaux*, Recrutements à l'université: "le 'localisme' est contraire à l'intérêt pédagogique et scientifique", *Le Monde*, 20 September 2018, <https://www.lemonde.fr/idees/article/2018/09/20/recrutements-a-l-universite-le-localisme-est-contraire-a-l-interet-pedagogique-et-scientifique_5357547_3232.html>.

fairer, more transparent and better able to take into account transdisciplinary work.¹⁰⁹

As explained before,¹¹⁰ the *agrégation* is also the target of a wide range of criticism. In part, it overlaps with that levelled at the CNU, namely that the *concours* constitutes an obstacle to the autonomy of universities, but it also appears specific to the process in itself, beginning with its imbalanced outcomes regarding the gender and geographical origin of the candidates.

The criticism aimed at the over-centralisation of recruitment through the *agrégation* brings into question the very existence of this path to a professorship. It continues to exist in law,¹¹¹ with the support of a significant proportion of academics in the field, but because of the will expressed by universities to gain more autonomy, together with their desire to hire more local or at least non-Parisian candidates, the number of positions destined for young *agrégés* decreases every year.¹¹² If the *concours* were to disappear, then, its end would in all likelihood come not from the government, nor from Parliament, but from the universities themselves.¹¹³ As a result, a consensus seems to be emerging among its supporters that, if the *concours* is to be saved, it must be reformed,¹¹⁴ especially to ensure that it puts candidates on a level playing field. The most obvious change could be the suppression of the *leçon de 24 heures* in view of the inequality it entails.¹¹⁵ Even though there are those who are very committed to what has become a tradition,¹¹⁶ it has become increas-

¹⁰⁹ Fortier, AJFP 2015, 287f.: the author proposes to enhance the oral discussions of the candidates' applications; to allow the process to take place before a group of section, rather than exclusively before a section, when it is deemed necessary to better assess transdisciplinary works; and finally to reform the way the members of the CNU are elected.

¹¹⁰ See part III.1.b) above.

¹¹¹ Alongside management and political science, see part I.2.a) above.

¹¹² Julien Bourdon, Une "crise" du concours d'agrégation? – Les postes de professeurs et maîtres de conférences en Droit et Sciences politiques, JCP 2020, 262, points out that the broader decreasing trend in the number of open positions is also the result of demographic factors, chief among which is the fact that the retirement rate of baby boomers is slowing down.

¹¹³ Martine Lombard, Ne sacrifiez pas une génération de jeunes et talentueux juristes!, Dalloz Actualité, 30 September 2019. For the 2019–2020 *concours d'agrégation* in public law, only 6 positions were made available, for 146 candidates. The president of the committee, Professor Martine Lombard, lays the blame at the door not of the government, but of the universities who are increasingly reluctant to open new positions for the *agrégés*, preferring to use the 46,3^e path to promote their MCFs.

¹¹⁴ Grimaldi, D. 2014, 152: the author, who was president of the committee during the 2012–2013 *concours* in private law, concludes this piece in support of the *agrégation* with these two sentences: "Yes, then, to the evolution of the *concours*! But no to its suppression or circumvention!"

¹¹⁵ Le Bars, D. 2004, 4.

¹¹⁶ Cesaro / Gautier et al., D. 2004, 427, according to whom this test allows an assessment of the candidates' ability to (i) create and manage a team, (ii) work efficiently under severe pressure and time constraints, and (iii) digest and master a complex and broad legal issue they are not specialised in.

ingly difficult to build a convincing case in its defence. It should thus come as no surprise to learn that it has already been abandoned in the other fields where the *concours* remains in place, in 2000 in management¹¹⁷ and in 2003 in political science.¹¹⁸ To address the *concours*'s shortcomings when it comes to both gender and geographic representation, it has been suggested to end its exclusively oral character by introducing a written and anonymous test which would become the first stage of the *concours*.¹¹⁹

Even if the *agrégation* is retained,¹²⁰ the other paths to a professorship will remain an integral part of the French academic system in law and must be treated as such in their relationship with the *concours*.¹²¹ This applies particularly to the article 46,1° path that, in the spirit of the former *agrégation interne*, aims to balance centralisation and its guarantees, on the one hand, and the autonomy of universities, on the other hand. A temporary prohibition on the hiring of local candidates may also be appropriate here.

¹¹⁷ Arrêté of 14 April 2000 “modifiant l’arrêté du 13 février 1986 modifié relatif à l’organisation générale du premier concours d’agrégation pour le recrutement des professeurs des universités des disciplines juridiques, politiques, économiques et de gestion”, J.O. n° 96 of 22 April 2000, p. 6160, text n° 23.

¹¹⁸ Arrêté of 3 December 2003 “modifiant l’arrêté du 13 février 1986 modifié relatif à l’organisation générale du premier concours d’agrégation pour le recrutement des professeurs des universités des disciplines juridiques, politiques, économiques et de gestion”, J.O. n° 292 of 18 December 2003, p. 21568, text n° 30.

¹¹⁹ *Fabre-Magnan*, D. 2014, 2232.

¹²⁰ If it is not, the 46,1° and 46,3° paths will naturally become, unless they are themselves swept away by a major reform, even more significant.

¹²¹ *Fabre-Magnan*, *Radiographie* (n. 36) 215, who quotes *Georges Vedel*, *Défense et illustration de l’Université napoléonienne*, in: *Mélanges offerts à Pierre Raynaud* (1985) 794.

