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### Robert Lecourt : The ECJ Judge as Journalist and Political Organiser

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**Abstract:**

Robert Lecourt is recognised as one of the European Court of Justice’s most influential judges between 1962 and 1976. Previous research has drawn connections between the legal doctrines established by the Court in the early 1960s and the contents of the doctoral dissertation on French property law that Lecourt completed in 1931. This paper examines Lecourt’s contributions to *Route des Jeunes*, a monthly periodical aimed at French Christian Democrats between 1935 and 1939. It demonstrates Lecourt’s involvement in a Christian Democratic milieu that criticised traditional concepts of sovereignty and supported the idea of a legally-binding international community. Lecourt’s extensive experience in political organizing, partisan journalism, and propaganda for French Christian Democrats may also have informed Lecourt’s approach to networking and publicity after his appointment as judge and later President of the European Court of Justice.

**Keywords:**

Robert Lecourt, European Court of Justice, European Law, Legal History, Christian Democracy, Judicial Biography, Parti Démocrate Populaire.

**Disciplines:** Political Science, Law

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French lawyer Robert Lecourt was appointed to the Court of Justice in 1962 and served as its President from 1967 to 1976.<sup>1</sup> He was therefore a central participant in the era of the European Court's most revolutionary judgments. This chapter sets out our current knowledge of Lecourt's contributions to the Court of Justice and discusses how experiences and commitments from his early life may have informed his behaviour on the Court. It pays particular attention to a collection of Lecourt's writings in a pre-war Christian Democratic periodical, *Route des Jeunes*, discussed here for the first time. These suggest that Lecourt brought to the Court not only a distinctive legal philosophy, as previous scholarship has demonstrated, but also organizing skills honed in his long experience as a partisan journalist and political networker.

Lecourt's career provides a fascinating example of the disruptions and continuities of French politics from the 1930s to the 1960s. Lecourt completed a doctoral dissertation on French property law at the University of Caen in 1931, and pursued both a legal and political career in the 1930s – not at all unusual in the “Republic of Lawyers” as the French Third Republic was sometimes known.<sup>2</sup> He joined the *Parti Démocrate Populaire* or *PDP*, a minor political party with fewer than twenty elected representatives in the French Chamber of Deputies between 1924 and 1940 but nonetheless perhaps the leading Catholic-and-

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<sup>1</sup> This is a draft chapter submitted for inclusion in the edited volume “Key Biographies in the Legal History of the European Union” organised by the Max Planck Institute for European Legal History, Frankfurt. This chapter has been much improved by generous feedback from colleagues at the Max Planck Institute for European Legal History workshop on Key Biographies in the Legal History of the European Union, June 2018, and at the Dublin European Law Work in Progress Workshop, Trinity College Dublin, December 2019. The continuing research project on Robert Lecourt has been generously supported by the Jean Monnet Chair in EU Politics and Law at Trinity College Dublin. Helpful research assistance was provided by Dáire McCormack-George and Audrey Plan. Special thanks are due to Stefan Vogenauer and Philip Bajon for their kind invitation to participate in their workshop and edited volume.

<sup>2</sup> Le Beguec 2003.

Republican political party in the splintered political landscape of pre-war France.<sup>3</sup> Lecourt was soon involved in the *PDP's* youth wing, the *Jeunes Démocrates Populaires* or *JDP*, eventually becoming its Secretary-General and President in the later 1930s.<sup>4</sup> Like many other former members of the *JDP*, Lecourt was active in the Catholic and Gaullist resistance in occupied France, and emerged as a founding member of the *Mouvement Républicaine Populaire* or *MRP*, the postwar political party that replaced the *Parti Démocrate Populaire* as the leading – and much more electorally significant – Christian Democratic force in French electoral politics. The *MRP* had 158 deputies in the National Assembly between 1946 and 1951, and 84 deputies between 1951 and 1956.<sup>5</sup> Lecourt himself was the *MRP's* parliamentary leader for many of these years and served on several occasions as Minister of Justice. After De Gaulle's return to power in 1958, Lecourt served as Minister of State with various responsibilities for French overseas territories until 1961. He was appointed by De Gaulle's government to the Court of Justice in May 1962.

Lecourt was heavily involved in many of the Court of Justice's key innovations in the 1960s and 1970s. The first and most obvious of these was a doctrinal revolution. In a series of judgements in 1963 and 1964, the Court of Justice declared the direct effect and supremacy of European law, and rejected any role for inter-state retaliation within the European Economic Community.<sup>6</sup> Thus European treaty obligations were to be enforced overwhelmingly through legal actions by private individuals before the domestic courts of

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<sup>3</sup> Mavrinac 1955: 138, Delbreil 1990a. Many Catholics in 1930s France were opposed to, or ambivalent about, France's republican and democratic political institutions.

<sup>4</sup> Delbreil 1990a: 59.

<sup>5</sup> Rioux 1987: 110, 166.

<sup>6</sup> Case 26/62 *Van Gend en Loos v. Nederlandse Administratie der Belastingen* [1963] ECR 1, Case 6/64 *Costa v. ENEL* [1964] ECR 585, Cases 90&91/63 *Commission v. Luxembourg & Belgium (Dairy Products)* [1964] ECR 625. Weiler 1991, Gradoni 2008, Phelan 2012.

their own state, rather than through a more classical reliance on the contingent reciprocity of commitments between governments.<sup>7</sup> Key to the development of this new system of enforcement was the “preliminary reference” procedure provided for by Article 177 of the Treaty of Rome, by which national courts could submit questions about European obligations directly to the Court of Justice, which could in turn provide an authoritative judgment on how particular provisions of the Treaty (or other European obligations) should be interpreted, including whether they should enjoy direct effect in the national legal orders.

These doctrines therefore provided a framework for enforcing the obligations of the European Economic Community quite distinct from, say, the framework for enforcing the obligations of the postwar multilateral trade regime, the GATT.<sup>8</sup> None of these extraordinary novelties – the right of individuals to enforce European law before national courts, the supremacy of European law over conflicting national law, or the comprehensive rejection of normal forms of inter-state reciprocity and retaliation within the European Economy Community – were explicitly provided for in the Treaty of Rome.<sup>9</sup> These principles were instead ‘created’ by the Court of Justice in the early 1960s and repeatedly vindicated and extended by the same Court over the 1960s and 1970s until they became established as the bedrock of the European legal order as we know it today.

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<sup>7</sup> Lecourt and Chevallier 1963.

<sup>8</sup> Gori 1967, Phelan 2015.

<sup>9</sup> Perhaps the provisions of the Treaty of Rome which most explicitly set out its ambitions for a more “binding” and “constraining” nature compared to other trade treaties were those (such as Article 226) which prohibited the adoption of safeguards (“temporary” trade barriers) by the member states without the prior authorization of the European Commission. This stands in sharp contrast with other trade regimes including the GATT where the unilateral availability of such safeguards to participating states was regarded as an essential element of the system (Rosendorff and Milner 2001). One of the inspirations for the direct effect and supremacy doctrines of European law was the need to protect the Treaty of Rome’s commitment to prohibiting the unilateral adoption of safeguard measures by the member states (e.g. Wenner 1962, Phelan 2019).

The 'birth' of this doctrinal revolution can be dated to 5<sup>th</sup> February 1963, the date of the Court of Justice's judgment in *Van Gend en Loos*, in which the Court declared that:

[T]he Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only member states but also their nationals. Independently of the legislation of member states, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the treaty, but also by reason of obligations which the treaty imposes in a clearly defined way upon individuals as well as upon the member states and upon the institutions of the Community. ...

It follows from the foregoing considerations that, according to the spirit, the general scheme and the wording of the Treaty, Article 12 [of the Treaty of Rome, prohibiting increases in customs duties] must be interpreted as producing direct effects and creating individual rights which national courts must protect.

The Court's new doctrines in 1963 and 1964 appear to have been the direct result of the appointment to the Court of Justice of two new judges in early 1962. Alberto Trabucchi, professor of civil law, was appointed by the Italian government in March and Robert Lecourt, who is the focus of this chapter, was appointed by the French government in May. From the evidence available to us, which includes a draft of an internal memo written by Trabucchi,<sup>10</sup> it seems that the Court's decision to declare the direct effect of European law in *Van Gend en Loos* was decisively supported by Trabucchi and Lecourt, who won over a majority of their colleagues despite the opposition of the then President of the Court, the Dutch law professor Andreas Donner. As Rasmussen writes, without the nomination of Lecourt as judge of the ECJ, the balance inside the Court would have been different during *Van Gend en Loos* and there would have been no declaration of the direct effect of European law.<sup>11</sup> Trabucchi and Lecourt had long and influential careers at the Court of Justice, with Trabucchi serving as judge from 1962 to 1972, and as advocate general from 1973 to 1976, while Lecourt served as judge

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<sup>10</sup> Azzalini and Sandei 2008: 223. Cf. Rasmussen 2012: 390.

<sup>11</sup> Rasmussen 2008: 98.

continuously from 1962 to 1976, serving also as President of the Court from 1967 to 1976.

Understanding the origins of the doctrinal innovations of the early 1960s has rightly taken a central place in the historical study of European law, as these judgments came to set the agenda for Court's decisions over many years. Even the study of later developments in the 1970s – such as the European legal order's protection of fundamental rights or the extension of the direct effect doctrine to include provisions of Directives – necessarily involves an engagement with the principles first established by the Court in 1963 and 1964 because these important later decisions can be understood as the working out of the consequences of the even more fundamental early judgments.<sup>12</sup> But legal doctrine was not the Court's only key innovation during those years.

The second of the Court's key innovations was a distinctive information and persuasion strategy. The principles announced in the Court's ambitious judgments were not left alone to prosper as best they might within the legal communities of the member states. Instead, the Court and its judges engaged in a sustained campaign to support awareness and use of the powers and opportunities that these judgments had created, and to encourage national courts to make use of the preliminary reference procedure in Article 177 of the Treaty. Through publications in academic journals and mass-circulation media, the Court's bold decisions were defended from scholarly criticism and advertised to the wider public. Through support for networks of pro-European lawyers, such as *FIDE* (the International Federation of European Law), the Court contributed to the development of legal networks of

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<sup>12</sup> Case 41/74 *Van Duyn v. Home Office* [1974] ECR 1337, Case 11/70 *Internationale Handelsgesellschaft v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125. For recent debates on these, see Davies 2012, Phelan 2014, Rasmussen 2017, Phelan 2019, Delledonne and Fabbrini 2019, Phelan 2020.

professors and practitioners that would support and exploit the Court's judgments.<sup>13</sup> Through regular visits to the member states, particularly to universities, and through large-scale invitations of national judges to visit the Court in Luxembourg, the Court established informal connections with professors, lawyers and judges to supplement the more strictly legal relationship with national courts established by the direct effect and supremacy doctrines. Through the development of administrative systems to collect information about national court judgments, the Court kept itself informed about European law 'on the ground'. All of these activities and more were led and encouraged by ECJ judges in an organized manner and contributed greatly to the practical success of the European legal order over time. Whether described as 'opinion-formation', 'marketing', 'networking', 'organising', or even simply as 'propaganda', these were among the Court's most important activities from the early 1960s onwards.

The importance of the Court's active role in disseminating information about its judgments and nurturing networks of pro-European lawyers has been widely recognised in scholarship. As Burley and Mattli wrote in an influential article:

From its earliest days, the ECJ waged a campaign to enhance the use of Article 177 as a vehicle enabling private individuals to challenge national legislation as incompatible with community law. ... Groups of private practitioners receive regular invitations to visit the Court and attend educational seminars. They get further encouragement and support from private associations such as the International Federation for European Law, which has branches in the member states that include both academics and private practitioners. ... The proliferation of community lawyers laid the foundation for the development of a specialized and highly interdependent community above and below the level of member state governments. ...

The entire process of increasing the use of the [preliminary reference] Article 177 procedure was an exercise in convincing national judges of the desirability of using the ECJ. Through seminars, dinners, regular invitations to Luxembourg, and visits around the community, the ECJ judges put a human face on the institutional links they sought to build.<sup>14</sup>

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<sup>13</sup> Vauchez 2010, Byberg 2017.

<sup>14</sup> Burley and Mattli 1993: 59-60, 62-63.

Writing specifically about the Court's declaration of the direct effect of European law in the 1963 *Van Gend en Loos* judgment, Vauchez noted that:

*Van Gend en Loos* was immediately taken up in an interpretative tide sparked by some of those who had been directly implicated in the case: a handful of ECJ judges joined by their *référéndaires* [research assistants], the Commission's Legal Service as well as the lawyer in the case, and *Van Gend en Loos's* lawyer Ter Kuile. Their activism profoundly transformed the case. Their efforts converged in alerting a variety of audiences and publics (legal professions, academic circles, public opinion, etc) on the historical importance of the decision for European integration, as soon as just a couple of days or weeks after the case being delivered. Within two months, five judges including a former judge (Riese, Lecourt, Trabucchi, Donner and Catalano), one advocate general (Lagrange), various *référéndaires*, and the lawyer in the case had all expressed themselves on *Van Gend en Loos*.<sup>15</sup>

The 'birth' of the Court of Justice's distinctive information and persuasion strategy can be dated to 23<sup>rd</sup> of February 1963, a few weeks after *Van Gend en Loos*, when an article appeared in *Le Monde* entitled "*L'Europe dans le Prétoire*" – "Europe in the Courtroom" – that set out recent developments in the law of the European Economic Community. There Robert Lecourt, already known to many of *Le Monde's* readers from his long political career, explained the Court of Justice's recent ruling that certain provisions of the Treaty of Rome imposed themselves directly on the national courts:

[T]he judicial world has just brought a stone of an honourable dimension to the European construction. ... European law enters the courtrooms. ...

Asked by a national court to interpret the Treaty of Rome, [the Court of Justice] was invited to comment on the whether the prohibition against increasing customs duties could be opposed by an individual against their own national government. By answering in the affirmative, the Court of Justice recognised that this provision of the treaty was directly applicable by the courts of the six countries. This part of the treaty text, therefore, not only binds states in relation to each other, but also imposes obligations on them in respect to their own nationals.<sup>16</sup>

To be sure, there were public remarks by an ECJ judge (Riese) and by the head of the Commission's legal services (Gaudet) calling attention to *Van Gend en Loos* even earlier in February, but the venues of these comments – at one of the Court's own ceremonies, and at

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<sup>15</sup> Vauchez 2010: 13.

<sup>16</sup> Lecourt 1963a.

a regional meeting of the French bar – lack the distinctive ambition for widest possible publicity for the Court’s new doctrines that is demonstrated by Lecourt’s article on the front page of *Le Monde*.<sup>17</sup> Judge Lecourt wrote regularly about European law in *Le Monde* and other mass-circulation French newspapers over the 1960s and 1970s, in addition to his more scholarly publications on European law.<sup>18</sup>

Many parts of the Court of Justice’s distinctive information and persuasion strategy as a whole also appear to have been directly connected with judge Lecourt. As Fritz’s short biography of Lecourt explains, convincing the national courts to collaborate with the Court of Justice was one of Lecourt’s central priorities after his election to the Presidency in 1967:

Soon after his election, Lecourt consequently developed a vast communication strategy, which aimed at convincing national judges of the benefits of the preliminary ruling mechanism, a procedure through which they could ask the European judges questions regarding the interpretation of the European Treaties. In 1968, he managed to obtain funding from the Council of Ministers to hold regular receptions of national magistrates at the European Court. The same year, more than a hundred judges from thirty-five different domestic jurisdictions, including the highest national courts, gathered in Luxembourg. Nineteen national magistrates even spent an entire week at the Court of Justice. ... According to Lecourt, almost 2.500 magistrates participated under his presidency in such meetings. The same activities were soon also proposed to lawyers, as well as editors of law journals.

The European judges also traveled themselves to national courts. On February 9<sup>th</sup> 1970, Lecourt visited the Paris *Palais de Justice* and held a speech on European law, its direct effect and supremacy. ... President Lecourt also created at the Court of Justice a documentation service which was meant to promote the European court’s rulings and collect all judgments pronounced by national courts regarding European law. Moreover, he encouraged his fellow judges and the advocates general of the European Court of Justice to promote their institution and the development of community law via publications and conference participations.<sup>19</sup>

If the early Court of Justice was therefore both a legal tribunal and strategic communicator, then Robert Lecourt in particular seems to have served not only as a judge

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<sup>17</sup> Vauchez 2010: 13.

<sup>18</sup> See e.g. Lecourt 1963b, Lecourt 1964, Lecourt 1965b, Lecourt 1966, Lecourt 1967a, Lecourt 1967b, Lecourt 1968, Lecourt 1969, Lecourt 1970, Lecourt 1973.

<sup>19</sup> Fritz 2018b available at <https://orbilu.uni.lu/handle/10993/37169>. See also Fritz 2018a: 247-248, 148-150. See also Rasmussen 1986: 247 on the Court of Justice’s launch of a “generous information campaign” in 1967.

but also as networker and publicist.

How can our study of Robert Lecourt's life and ideas contribute to our understanding of the origins of these key innovations? In the case of other influential tribunals, most prominently the United States Supreme Court, it is widely understood that the behaviour of those courts, and of the judges who dominate their decision-making, cannot be understood without a detailed knowledge of their biographies, particularly of their legal, political and intellectual activities prior to their appointment to the bench. The jurisprudence of Justice Clarence Thomas reflects 'black nationalist' attitudes to integration and white America that Thomas acquired at an early age and reinforced through later study.<sup>20</sup> The jurisprudence of Justice Ruth Bader Ginsburg cannot be separated from her years as an advocate for the Women's Rights Project at the American Civil Liberties Union.<sup>21</sup> The jurisprudence of Chief Justice John Marshall, the dominating early figure of the United States Supreme Court, cannot be separated from his extensive ownership of slaves and support for slaveholding interests.<sup>22</sup> These examples – and many others – show how court judgments and judicial behaviour can be much illuminated by detailed knowledge of the lives – particularly the early lives – of the judges themselves.

Despite his long and varied career, however, Lecourt's individual impact on the Court of Justice remains frustratingly difficult to investigate. As is well-known, the rules of the Court of Justice are not designed to facilitate research on the activities of its judicial personalities. The Court's judgments are issued unanimously signed by all the Court's judges, without any separate concurring or dissenting opinions. The particular contributions of individual judges

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<sup>20</sup> Robin 2019.

<sup>21</sup> de Hart 2018.

<sup>22</sup> Finkelman 2018.

to the Court's judicial decision-making are therefore officially concealed. The archives of the Court also remain largely closed, even in relation to judgments from the 1960s and 1970s. There is therefore little hard documentation available for historical research on the internal workings of the Court. As for research distinctively focussed on Lecourt himself, the challenges are even more difficult. He wrote no memoirs of his long legal and political career. His numerous writings on European law provide little explicit discussion of his own personal role in the birth of the European legal order. Perhaps most frustratingly of all, he appears to have deliberately arranged to have his personal papers destroyed in the years before his death.<sup>23</sup> This is hardly a fertile terrain for a detailed judicial biography.

The best account of Lecourt's life currently available is set out in the eight pages on Lecourt in Fritz's essential volume on the lives of the early judges and advocates general of the Court of Justice, which offers an outline of Lecourt's career as lawyer, Christian Democrat, leading member of the France Resistance, elected deputy and government minister before his appointment to the Court in 1962.<sup>24</sup> Even that report however draws very little on 'hard' documentation directly generated by Lecourt himself, with the exception of Lecourt's later writings on European law and the Court of Justice.<sup>25</sup> To make progress on our understanding of Lecourt's influence at the Court, it would seem necessary to locate more direct evidence of Lecourt's activities and intellectual commitments, particularly from his early life.

Although Lecourt's career is unique, it turns out that the challenge of locating materials to inform biographical studies of important figures in French postwar life is a common one. Whether because of damage in war or civil conflict, or due to family reluctance

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<sup>23</sup> Rasmussen 2010: 654 ft 58.

<sup>24</sup> Fritz 2018a: 241-248. See also e.g. obituaries in *Le Figaro*, 14<sup>th</sup> August 2004, p. 12 and *Le Monde*, 15<sup>th</sup> August 2004, p.12.

<sup>25</sup> Fritz 2018a: 384-385.

to provide access to private archives, a complete set of personal papers covering the turbulent years of French history from the early 1930s through to the 1960s is all too often unavailable – particularly papers covering activities before and during the war. To this common problem, historians of the French ‘transwar’ period have developed a possible partial remedy: where the archives of political parties, interest groups, or ideological factions have been ‘lost’ one way or another, and an individual’s private papers remain unavailable, one solution is to look for published writings – often in now-extinct small-circulation periodicals – which were relatively widely distributed before or even during the war and therefore remain available for study in libraries and archives across France. This approach has at times provided a fertile method to study the continuities and discontinuities in the lives of politically influential figures ‘from the thirties to the postwar era’.<sup>26</sup>

In Lecourt’s case, at least two surviving collections of such prewar materials can be identified. The first is comprised of the legal scholarship produced by Lecourt as a young man, above all in his doctoral dissertation on French property law from 1931. Elsewhere considerable affinities have been demonstrated between the argument of Lecourt’s dissertation and the legal principles set out by the Court of Justice the early 1960s, especially between Lecourt’s firm rejection of self-help behaviours in French property disputes and the Court’s prohibition of international law’s normal means of retaliatory self-help between the European member states in its 1964 *Dairy Products* judgment.<sup>27</sup> This dissertation also

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<sup>26</sup> Tracking the pre-war and wartime commitments and activities of prominent figures in postwar France through publications in small-circulation journals is a technique employed in both Nord 2010 and Knecht 2017.

<sup>27</sup> Lecourt 1931, Phelan 2017. Lecourt’s dissertation itself draws the connection to international law. The relevance of Lecourt’s early scholarship with the revolutionary doctrines of European law goes beyond the *Dairy Products* judgment to include a connection with *Van Gend en Loos* and *Costa v. ENEL* as well. The direct effect doctrine and the suppression of inter-state retaliation are ‘objectively’ connected in many comparative

demonstrated Lecourt's frank (and, for a French lawyer, rare) admiration for the 'law-making' role sometimes assumed by courts and often associated with the Court of Justice in particular.<sup>28</sup>

Another important set of source materials are publications evidencing Robert Lecourt's political activities as a young man, and it is a collection of these that will be the main focus of this chapter, which itself forms part of a wider biographical research project on Lecourt. Between 1935 and 1939, as mentioned above, Lecourt was leader of the *Jeunesses Démocrates Populaires (JDP)*, the youth wing of the Christian Democratic *Parti Démocrate Populaire*. The archives of the *PDP* itself appear to have been 'lost' during the Second World War,<sup>29</sup> but its publications of course were relatively widely distributed. Under Lecourt's leadership, its *JDP* youth wing began publishing a new periodical entitled *Route des Jeunes* ('Path of the Young' is perhaps the best translation – the phrase has a 'scouting' flavour). This was one of *JDP*'s major initiatives during this period and one in which Lecourt was heavily involved, both as a leading instigator of the whole project and as it turns out as a regular contributor of articles in his own name. These materials have not previously been discussed in the literature on Robert Lecourt's life and impact on the Court of Justice.

Our approach will be to summarise each of the articles published under Lecourt's own name or directly describing his activities, as well as the political priorities set out in *Route des Jeunes* more generally. These summaries will allow Lecourt to "speak for himself" about French and international politics during the instability of the late 1930s. Lecourt discusses the unemployment and suffering caused by the Great Depression, the election of Leon Blum's

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discussions of the European legal order e.g. Tumlrir 1983, and were also explicitly 'subjectively' connected in the writings of judge Lecourt e.g. Lecourt 1965a, Phelan 2017, Phelan 2019.

<sup>28</sup> Lecourt 1931: 236, 282.

<sup>29</sup> Delbreil 1990b.

left-wing Popular Front government in 1936, the radicalization of French life into blocs of the extreme left and right, and the growing danger of Hitler's Germany. If this seems a world away from the question of whether Article 12 of the Treaty of Rome should be granted direct effect, it is worth remembering that it is from this Christian Democratic political milieu, as much as from the text of the Treaty of Rome, that the idea of an international community bound by the rule of law came to become a reality in postwar Europe.<sup>30</sup> The chapter will conclude by identifying themes in Lecourt's writings, drawing tentative conclusions about the light these publications can shed on Lecourt's contribution to the early development of the European legal order, and with brief methodological observations relevant to future biographical research on the lawyers and judges who played key roles in the development of the European legal order.

On the cover page of the first edition in May 1935 under the headline *Les JDP presentent "La Route des Jeunes"*, the new journal was introduced by Robert Lecourt as a bold initiative launched despite limited funds. The *Route des Jeunes*, Lecourt explained, was not designed to debate theory, in massive and indigestible articles, or to do double duty with the party's more established affiliated newspapers. It was to be above all "an organ of propaganda" – easy reading with numerous brief articles to promote the party's ideas among young people.<sup>31</sup> It would soon, Lecourt foresaw, surpass the 3000 subscriptions on which it could count on at the time of its launch.

Party activism was the subject of Lecourt's article in the second issue.<sup>32</sup> Asking how can one recognise a real party activist [*un militant*], Lecourt's answer was that a true activist

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<sup>30</sup> Kaiser 2007, Accetti 2019.

<sup>31</sup> Lecourt 1935c. Lecourt straightforwardly used the word "propaganda" to describe the opinion-forming activities of the *JDP* and *Route des Jeunes*,

<sup>32</sup> Lecourt 1935a.

turned immediately to the page of the party newspaper which set out the information on party activities. He highlighted the recent youth meetings around France which showed the energy of the *JDP*, and emphasised that these meetings were not an end in themselves but the start of a long road of activism against the monopoly of representation of French youth then held by the extreme right and extreme left.

In July 1935, Lecourt wrote about *Les 40 Heures* – the proposed reduction in hours of the working week to a 40-hour limit.<sup>33</sup> Here Lecourt lambasted the employers' delegation to an international conference on work as 'people who would never understand'. The reduction in hours worked would give back work opportunities to hundreds of thousands of men. Marking his position as a left-leaning member of *JDP*, Lecourt was particularly critical of proposals to re-establish the game of free competition – absolute competition, lowering wages – on the 'employment market' in all its barbaric fatality [*dans toute sa barbare fatalité*]. Work was not a commodity and Lecourt harshly criticised those who wanted to ignore the fact that the worker was a man and as such had an 'absolute' right to a life.

The social theme continued in January 1936 when under the title "The Essential Minimum Wage"<sup>34</sup> Lecourt outlined the *JDP's* activities as part of their campaign for a minimum wage – conferences, questionnaires sent to each *JDP* group, a new poster, pamphlets and a public petition drive.

In April 1936, an article by Gaston Remy discussed Lecourt's response to the call by the French communist party for a "Union of French youth".<sup>35</sup> Lecourt rejected joining one of the 'fronts' of the Left and Right dividing French society but welcomed collaboration to obtain

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<sup>33</sup> Lecourt 1935b.

<sup>34</sup> Lecourt 1936c.

<sup>35</sup> Remy 1936.

a minimum wage, a 40 hour week, and proportional representation reforms to the electoral system. Lecourt noted that the Communist Party had not abandoned their “revolutionary programme or their inhuman theory of class struggle” but offered them a “polite and loyal conversation”.

In November 1936, under a striking new title page design, Lecourt introduced the “new *Route des Jeunes*” with a call for action to the *JDP* activists.<sup>36</sup> Asking readers if they really believed that one day there would ever be a truly “Popular Democratic” France, Lecourt told those who were amused at the idea to put away their copy of *Route des Jeunes* – it was not made for them. Lecourt called on true *JDP* activists to renew, enlarge and intensify their propaganda. With posters, pamphlets, organised talks with party speakers, regular educational meetings in Paris and elsewhere, and of course, the *Route des Jeunes* itself, and the spirit of teamwork, Lecourt called the *JDP* activists to work.

In December 1936, Lecourt celebrated the recent party congress at Arras [in Pas-de-Calais], emphasising that the number of younger people attending was increasing every year.<sup>37</sup> Lecourt stated that the roots of a new politics had been planted at the conference – while the party was still in opposition and certainly had not decided to join the Popular Front, it was not a bad-tempered opposition, but instead a period of preparation for future collaborations on a specific basis, on a programme of reforms which other republican parties could make their own. The party had made a permanent and public invitation to collaboration addressed to all authentically republican parties, and this republican collaboration was addressed not just to parliamentary factions, but to the parties themselves and their activists and wider public opinion. The same theme continued in Lecourt’s article on the front page of

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<sup>36</sup> Lecourt 1936b.

<sup>37</sup> Lecourt 1936a.

the January 1937 *Route des Jeunes*.<sup>38</sup>

In April 1937, the theme of Lecourt's article was 'teamwork'.<sup>39</sup> Excellent individual propaganda was not enough. Different parts of the country had to work together and heads of groups needed to meet regularly. Meetings were to support political action but also to provide common leisure activities which fostered team spirit. Local groups of activists in various roles, such as billstickers and sellers of *Route des Jeunes*, should be formed, and regionally, managers should enlarge their circles and train their colleagues in party organising. Above all, these regional managers needed to avoid the paralysis that starts with fear of budget deficits, and run their activities so as to pay their debts. The *JDP* had to work as a team!

The next two articles by Lecourt focused on the *JDP*'s national meeting at Melun (in Seine-et-Marne) on 20<sup>th</sup> June 1937. After a discussion of organizational matters – the national committee of the party had arranged a meeting in Paris on 19<sup>th</sup> June so that delegates could easily travel to Melun on the next day – Lecourt wrote in June of the real risk of civil war and of a blood-drenched catastrophe.<sup>40</sup> The *JDP* would repeat their demands for structural reforms without which injustice and privilege would persist. "We are in a Revolution", Lecourt wrote, but rather than weeping for the dying regime the *JDP* must seek to replace it. The construction of a better order called on the shared effort of all good workers. In the July edition, on the front page under the title "The Victory of Melun",<sup>41</sup> Lecourt listed the many *JDP* federations across France who had sent their delegates to the national meeting. Inside there was an abbreviated account of Lecourt's report on the *JDP* and the political situation.

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<sup>38</sup> Lecourt 1937f.

<sup>39</sup> Lecourt 1937e.

<sup>40</sup> Lecourt 1937d.

<sup>41</sup> Lecourt 1937c.

Of Leon Blum, the prime minister who led the Left-wing Popular Front government, Lecourt said that he had done enough good that Lecourt could say too much bad of him, but he had also done enough bad that Lecourt could not say too much good of him. Lecourt emphasised that the *JDP*'s position was always against the two blocs of Left and Right, because their mission was reconciliation. He finished with a call for team spirit and – aided by all the efforts of its magnificent activists – with a vision of a possible victory for the party in the future.

In the October 1937 issue, Lecourt's contribution appeared under the heading "To work for a victorious propaganda".<sup>42</sup> There he used the moment of the 'return to work' at the end of the summer to say that the *JDP*'s results would depend on the efforts of his readers to educate others, particularly young people distrustful of politics. He emphasised the *JDP*'s interest in social justice, and that politics for the *JDP* was a fraternal work whose aim was "social" – indeed the social aspect prevailed over all others, with economic and political factors important as a function of the party's social objective.

In January 1938, Lecourt's front page column announced the *JDP*'s upcoming congress: "The country does not lack sensible people who make sound observations, make fine analyses, and reason wisely. THE COUNTRY LACKS PEOPLE WHO KNOW HOW TO DRIVE THEIR THINKING INTO ACTIONS AND TRANSLATE INTO FACTS".<sup>43</sup> The hour of the centre – the hour of Popular Democracy – was about to sound, and the *JDP* must not let it pass by. Lecourt announced that his colleagues should come to the *JDP*'s major meeting at Grenoble to take examples of methodical organisation, the "sole generator of success".

In June 1938, Lecourt's article was entitled "This is not the moment to criticise those

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<sup>42</sup> Lecourt 1937a.

<sup>43</sup> Lecourt 1938a. "All capitals" in the original.

who govern us”.<sup>44</sup> Things were going a little better in June than in March, wrote Lecourt – moderates had entered into government, confidence had returned, a loan had been arranged. Organizing the defence of the country, balancing the budget, reducing unemployment and raising production thanks to the unanimous effort of the nation, those were the real tasks of the government, and we (said Lecourt) had to give it our trust. In the midst of Mussolini’s diatribes against France, sure of our force and our allies, certain of the friendship of the English, the French had to continue to negotiate with the Italians with nothing to fear, without however expecting too much.

In September 1938, Lecourt’s article appeared under the title “The Indispensable Union”.<sup>45</sup> Recalling the union of all French people that was necessary to win the last war, Lecourt asked whether such a union would be possible once again. Lecourt granted that the Daladier government had not improved the conditions of civil servants, amortized the public debt, brought all unemployment to an end, halted the crisis, or reduced the cost of living. All that was true – but whose fault was that when the French were so divided? France would only be saved by unity, not only against the forces of war, but also against the causes of ruin. Nothing prevented young people from unifying with each other, and from searching together for solutions to all the problems that affect their lives and futures. Nothing prevented the *JDP* from starting to refresh the atmosphere and reaching out to the young people of France to prepare the ways of reconciliation.

In October 1938, in the midst of the crisis over Czechoslovakia, under the title “Fear, Stupidity or Treason? I call it Treason”,<sup>46</sup> Lecourt used the recent statement printed in a

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<sup>44</sup> Lecourt 1938d.

<sup>45</sup> Lecourt 1938b.

<sup>46</sup> Lecourt 1938e.

“French” national newspaper – Lecourt put “French” in quotation marks – that France could not oppose a Germany that “can put ten million men on the march”. Lecourt called it treason to claim that France was being tempted by a ‘lucky throw of the dice’, or that France would be making war on behalf of another country’s internal affairs, when it was in fact the fate of their own country – France – which was at issue. Lecourt blasted the suggestion that France should do nothing to stop German plans, or that it was in France’s interest to betray its friends, to break its word, and to ruin its alliances. Responding to the claim that “we will not fight for the Czechs”, Lecourt said that in that case France must renounce signing treaties, renounce confidence in its solemn word, renounce ever opposing an unsatisfiable Germany, and in the end renounce France and liberty themselves. Fortunately the possibility of war had not unleashed fear and panic in France, and other than the so-called “patriots”, the French knew how to say No!

In November 1938, Lecourt criticised the recent Munich agreement.<sup>47</sup> He listed the many so-called “victories of peace” including German rearmament, the reoccupation of the Rhine in March 1936, the Anschluss with Austria, and the dismemberment of Czechoslovakia, which had been guilty of trusting in France’s signature. In each case, France had sacrificed a little of its prestige and much of its security for peace, and peace had not come out the stronger. Each time, it was said “now this must be the last of our retreats”. Must France “wait and see” until it had descended to the level of nations of the second rank? If France could be unified, Hitler’s exactions would come to an end. Hitler has remade Germany and torn down the Treaty of Versailles with impunity – now said Lecourt, it was time to remake France and for everyone to sacrifice something of their ideology for the collective good. Time was

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<sup>47</sup> Lecourt 1938c.

pressing!

In January 1939, the front page of *Route des Jeunes* asked “Where does M. Bonnet want to take France?”<sup>48</sup> Peace had only been provisionally saved, wrote Lecourt, because France had sacrificed a little of its interests and much of its prestige. For the year ahead, either France would decide to try to get what it wants, or it would abdicate. It was not true that the French could shelter behind the Maginot line and it was already an abdication to resign themselves to rely only on their Empire. France was already defeated if it abandoned its friends and allies. Who would protect France when she was in turn attacked? What then would be France’s foreign policy? The reply to this question must dominate all problems. The French people longed to know the answer. Was it perhaps to draw France towards an eventual Munich? Or were France’s treaties with its allies, small and large, still valuable? If so, it was time to say so – if not, these treaties should be denounced. Lecourt said that above all the French must have the answer to this question.

“No = ‘Maybe’” was the title of Lecourt’s article in the April 1939 issue.<sup>49</sup> Lecourt wryly pointed out that certain words in the French language were used to give a meaning exactly contrary to their purpose. When Italy in December had unilaterally denounced the Laval-Mussolini treaty, and put forward a list of bewildering demands, France had solemnly and unanimously proclaimed to the world, behind its head of government, that it would not cede an inch of territory or a single one of its rights. But over time one had begun to read in certain parts of the press that if certain of these demands were to be put in a less vehement form, France could then look at them ... and negotiate? Foreign funds were influencing the press to

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<sup>48</sup> Lecourt 1939d. Georges Bonnet was France’s foreign minister from April 1938 to September 1939, thus through the period of the Munich Agreement with Hitler during the Czechoslovak crisis. He was associated with the policy of appeasement.

<sup>49</sup> Lecourt 1939c.

divide the country, and it was through the press that the dictatorships had won their peaceful victories over the republics. France should be ready to be told about the injustices that Italy has suffered, and that France should give up its rights in Africa or even in Corsica, Nice and Savoy. France would have descended to a new degree among nations of the second rank.

Lecourt's May 1939 article entitled "*Robert LECOURT vous parle*" [Robert LECOURT is talking to you] set the scene for the *JDP*'s meeting at Elbeuf, and emphasised again the need for unity and the end of hatred if France was to survive.<sup>50</sup>

Under the title "*Barrage pour la Paix*" [Barrier for Peace] in June 1939, Lecourt sadly admitted that Europe had become divided in two blocs, Italy and Germany who had signed their Pact of Steel in May facing France, the UK and Russia.<sup>51</sup> The *JDP* had resolutely resisted Georges Bonnet's policy of weakness when he abandoned the Sudetenland, when he let Czechoslovakia be annexed, when he let Albania be colonised. But the French government had now followed the French nation's nearly unanimous desire that it talk to London and Moscow. It was better to have the Russian army with France than against it. One might mistrust the internal politics of the USSR, but such ideological considerations would not stop an aggressor. In better times, wrote Lecourt, he would certainly prefer to avoid a policy of armaments. But this was the only possible policy for the current hour. The French had to submit to it or cease to be free men.

Lecourt's final column for *Route des Jeunes*, entitled "Dictatorship is War", appeared in July 1939.<sup>52</sup> Internal politics did offer opportunities for dictators to increase their prestige – there are always some reforms to propose in a grand manner, always some "Labour

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<sup>50</sup> Lecourt 1939e.

<sup>51</sup> Lecourt 1939a.

<sup>52</sup> Lecourt 1939b.

Charter” to decree. The internal arena however is quickly exhausted, as it is impossible to make reforms year after year, and the most efficient reforms are often unpopular. But a dictatorship cannot live without prestige – that is their essential nourishment. They therefore turn on other nations to obtain the success that makes domestic sacrifices acceptable. Ethiopia, Albania, Austria, and Czechoslovakia have paid with their independence for the failures of economic and social policies in Italy and Germany. By favouring Hitler in Germany, Mussolini in Italy, and Franco in Spain, France was being prepared for a future laden with threats. Many eyes were now open to this– but a little late!

The final edition of *Route des Jeunes* was its 48<sup>th</sup> issue, appearing in August 1939, as many of its readers and Robert Lecourt himself found themselves in soldiers’ uniforms with the onset of the Second World War.

Three themes emerge from Lecourt’s writings – social reform, international relations, and party political organizing.

On social reform, Lecourt was clearly personally committed to the establishment of a minimum wage and a forty-hour work week, as well as to reforming the 1930s capitalist system. How these social commitments may have shaped Lecourt’s later career and his role at the Court of Justice remains a fascinating topic for further research.

On the international side, Lecourt’s writings clearly demonstrate his antifascism and opposition to appeasement. He criticizes the fascist dictators as well as the French politicians and newspapers that inclined to accommodate them. He clearly accepted the necessity of armaments and war to stop Hitler, remarkable enough for the personality behind the *Route des Jeunes* whose front page sometimes carried the slogan ‘*La violence est l’arme des sots*’

['Violence is the weapon of fools'].<sup>53</sup>

Lecourt's writings themselves in *Route des Jeunes* are less directly concerned with more constructive approaches to international politics. *Route des Jeunes* did however have a consistent approach on this topic, which was perhaps best set out in an article "*La France unie au service de la Paix*" by Jean Duchesne in the 7<sup>th</sup> issue in December 1935.<sup>54</sup> Duchesne explains that "We believe that people can only realise their destiny within a certain number of groups, we can say within a certain number of Communities, within which they live." These communities included the family, city, profession, fatherland [*patrie*] and humanity. The *JDP* accept the reality of the national community, explained Duchesne, and love France's special geography and its values of liberty and justice. Likewise they accept the reality of an international community, that does not see France opposed to the rest of the world. "We believe by contract that there exists an international community to which states should modify a part of their sovereignty under the pain of transgressing rules of justice and the law". This did not describe, so Duchesne claimed, an international utopianism but a harmonious community of members, each with their own mission, easy in natural solidarity from one to the other. In this community, this society of states, the *JDP* proposed to give law, not based on force, but based on rules and justice. For this were needed international institutions, of which the League of Nations and similar institutions were necessary but imperfect and precarious embryos. Duchesne rejected any sense of illusion about how this might be achieved, insisting that the work needed to be advanced over time by daily effort, and that France had a special mission to contribute to international order.

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<sup>53</sup> October 1937 edition of *Route des Jeunes*.

<sup>54</sup> Duchesne 1935.

Duchesne's extended elaboration of the *JDP's* vision of international politics is compatible with the many shorter pieces detailing the *JDP's* major commitments, of which the organization of the peace was always prominent. It is also a striking and straightforward description from the 1930s of a critique of 'sovereignty', and an advocacy of the 'community' approach to international organization, that was characteristic of the Christian Democratic approach to international politics and European integration in the Europe of 1950s and 1960s.<sup>55</sup>

The most obvious conclusion to draw from Lecourt's participation in *Routes des Jeunes* and his own writings there in particular is therefore a policy-orientated and ideological one – Lecourt was heavily involved in an intellectual milieu of political activists with a distinctive approach to social reform and to international relations which would be highly influential in the postwar period. This social and international vision essentially 'came to power' in postwar Europe as Christian Democratic governments – often headed by anti-fascist resisters – were installed in France, Germany, Italy and elsewhere after 1945. It is the Christian Democratic vision of international relations in particular – denying 'state sovereignty' in a traditional sense and promoting the participation of states within an 'international community' on the basis of subsidiarity – which was the ideological basis for postwar European integration and indeed remains an important part of the ideological basis of today's European Union, even as Christian Democratic parties have lost some of their domestic influence in Europe's core states.<sup>56</sup> That ideology, it is clear, was an important part of the early political milieu of the Court of Justice's future President.

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<sup>55</sup> Accetti 2019: esp 111-138.

<sup>56</sup> Accetti 2019.

Lecourt's policy-orientated writings in *Route des Jeunes* therefore complement and reinforce the anti-appeasement, reformist, and internationalist content of other surviving publications by Lecourt from the 1930s. Lecourt's article entitled "Politics is a Social Obligation" in *Homme Réel* in 1937 appears to be the longest example of Lecourt's elaboration of the *JDP*'s – and his – ideology and policy objectives before the war:<sup>57</sup>

Our ideal? It is to construct a new order [*ordre nouveau*], which will respect in all areas the eminent dignity of the human person. "Popular Democracy", a harmonious edifice constructed on this "personalist" foundation, is therefore nothing more than a banal political recipe designed to haphazardly resolve [*au petit Bonheur*] this or that current question. ...

This ideal commands a precise attitude in the domains of general policy, economic, social, and international.

Human dignity is synonymous with liberty. ... The human person can only develop in liberty. Fascism is the negation of all the rights of the person, it is a costume of force which is not made for free men. It is because of this absolute incompatibility between the respect for human dignity and all forms of dictatorship that we are unwaveringly committed to the republican regime. ...

From the definition of their human ideal, the 'Popular Democrats' must logically set out elements of an economic policy which would be something different than the repackaging of the dilapidated and crumbling liberal system. ...

Capitalism has done damage. Its condemnation is written in its deeds. The murderous law of supply and demand has made a machine of the worker a machine and a commodity of work. It would be impossible for the most zealous defender of such a regime not to admit the inhumanity of a system whose immorality rivals its absurdity. ...

What to replace it with? With an economic regime made for men and their well-being. ... The problem is not to arrange the collective ownership of all goods, but to assure to each individual a sufficient element of personal property. Private property should not be suppressed, but rather popularised. ... But private property cannot, for us, continue without severe regulation, strict control of anonymous companies, and above all without new legislation on anonymity and monopolies. ... For a long time, the *JDP* had written into their party programme the social reforms which have just been voted on: paid holidays, reduction in the working week, and collective contracts. ...

Just like all French people, the *JDP* want peace. They desire it because it is the only way to permit the full development of the human person and because war is a violation of the rights of the person. But how to assure peace?... [W]e will neglect no opportunity to put together a

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<sup>57</sup> Lecourt 1937b: 34.

real and sincere organization of peace. The principle to which we are inextricably attached is that of collective security. ... Certainly we do not fail to see the difficulties. To bring all the nations to Geneva, to reinvigorate the League of Nations, to reinforce its credibility and authority suppose the solutions to a certain number of problems whose seriousness will have escaped no realistic person. To submit all peoples to international law requires the recognition by each one of a supranational authority, which is to say a limitation of the sovereignty of each state. ...

Peace, liberty, social justice, these are the goals which the JDP is pursuing. In truth they are but the different faces of the same object, the conditions for realising the same ideal. In service of this their human ideal, the JDP dedicate all their activity, whose progress is recorded by their journal *Route des Jeunes* every month.

The less obvious – but more intriguing – observation that can be drawn from Lecourt’s early writings for *Route des Jeunes* is that they demonstrate Lecourt’s extensive experience in opinion-formation, networking and partisan journalism. Certainly it is clear that Lecourt was a left-leaning Catholic reformer and anti-fascist. But the dominant themes of Lecourt’s own writings in *Route des Jeunes* were issues of party membership, public meetings, activism, and (a word Lecourt was not afraid to use) propaganda. Lecourt’s major contribution to the *JDP* was actually as an energetic organizer and publicist. When Robert Lecourt joined the Court of Justice in 1962, the Court therefore acquired not only a legal scholar with a distinctive legal philosophy about ‘self-help’ in law enforcement (as set out in his dissertation) as well as a ‘Christian Democratic’ attitude towards state sovereignty in international relations. It also acquired a skilled and experienced networker and propagandist.

So when Lecourt’s article about *Van Gend en Loos* appeared on the front page of *Le Monde* in 1963 this was not really an example of a judge turning his hand to publicity and journalism. In Lecourt’s case, it was an experienced publicist and journalist who was turning his hand to judging, and bringing his earlier skills to bear on the new task at hand. And when Fritz writes that after his election as President of the Court in 1967, Lecourt “developed a vast communication strategy”, this was not Lecourt’s first “vast communication strategy”. The first one had focused on laying the ground work for bringing Christian Democracy to political

power in France – against all the odds in the hostile ground of 1930s France but eventually with considerable success at least during the heyday of the *Mouvement Républicaine Populaire* in the 1940s and 1950s. The second one focused – against even longer odds perhaps – on laying the legal groundwork for a binding and effective international community, and has been even more successful despite continuing imperfections and many setbacks along the way. Lecourt appears to have been ECJ judge, partisan journalist, and network organizer all in one, in ways that may have become part of the Court’s ‘organizational DNA’ from that point forward. If future research confirms Lecourt’s special contributions to the creation and institutionalization of the Court’s informational and persuasion strategy, as well as Lecourt’s continuing activities as a partisan journalist and organizer over the years after the *Route des Jeunes*, then the study of judicial biography may have contributed another piece towards completing the puzzle of the European legal order’s distinctive development.

It may be useful to finish on a methodological note of more general application. This is one of only a few (if any) pieces of historical writing focused on the youthful political activities of one of the judges of the Court of Justice, before their official career had even properly begun. It is hoped that others may be inspired to follow in its footsteps, based on hard documentation of the early activities and opinions held by those who later influenced European law. As American examples have demonstrated, many judges have already lived interesting and revealing lives by the time they join the bench, indeed they became ‘senior’ public figures. Much may yet be discovered about the biographical roots of today’s European legal order by looking into the early lives and formative milieus of these lawyers long before they arrive in Luxembourg.

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