

# BELGIUM UNDER THE GERMAN OCCUPATION.

## A PERSONAL NARRATIVE 1

### Chapter LXXXV. The bâtonnier Théodor.

IT was a difficult matter to leave Belgium, even for the respite, since no one was in holiday mood, that a few days in Holland or Switzerland would give. Women with husbands or sons at the Belgian front could at least obtain news of them or communicate with them if they could get to The Hague, and sometimes they could steal over into England — which the Germans were so opposed to their doing that they always made it a condition, when they did grant permission to leave, that the recipient should not leave Dutch soil. A similar condition was imposed in the cases of passports for Switzerland ; they were not good for France, though the Germans never had the same feeling of personal hatred for the French that they had for the English. Women were put on their honour as to remaining in Holland, or in Switzerland if they went there, and they were made to promise not to carry out or to bring in any letters, and when one of them forgot this promise other women were refused passes for a long while. Men found it more difficult to obtain these permissions, and there was a legend, with some fact to justify it, that Von Bissing was incapable of refusing a lady a pass if she asked it of him personally. Not many of them could do that because it was as difficult to obtain an audience of him as of a sovereign, and most of the ladies of Brussels would scorn to ask a favour of him ; they preferred to take their chances in the long line waiting at the *Pass-Zentrale* in the Place Royale, where *Passierscheins* were so reluctantly issued. They would file their applications, wait for days, go back to be severely cross-examined, and generally in the end find themselves refused. Now and then, though rarely, some succeeded, but they were obliged to deposit guarantees, often in sums as high as twenty or thirty or even fifty thousand francs. And even when the passes were granted the fortunate could not be certain of their journey and of their breath of free air — which, indeed, was not wholly free, for in Switzerland, as in Holland, they were compelled to report at regular intervals to a German Consul in those countries.

The Baroness L—, depressed like all of us, and half needed a cure in Switzerland, and finally succeeded in procuring a *laissez-passer* to go there, and ultimately to Paris. She left one Sunday for her cure. She had reached Lorrach ; Bâle was just in sight, only ten minutes away — and that meant Paris, her daughter, and the boy who was in the army. Then, suddenly, officers entered the coach, arrested her, and brought her back to Brussels. The Germans had found in the post a letter in which she had indiscreetly expressed the fervent wish that the war might speedily be won by the Allies. For days thereafter there was anxiety and waiting and then interrogatories and perquisitions, and though nothing more serious came of the adventure than a summons to appear before the Governor-General, who gave the Baroness advice in his most fatherly manner, the journey was indefinitely postponed.

The perquisition, the domiciliary visit, was one of the most offensive elements of the regime under the German occupation, not only because of the denial of personal liberty, but because of the contempt of all personal dignity, so that delicate women were not even safe from

brutal intrusion in their own boudoirs. It occurred so often, so constantly, that we became callous to it and were, perhaps, not always so astounded and outraged as we should have been by the amazing disrespect for principles that are, or used to be, taken for granted in the modern world. Often one would fear that one was becoming hardened, if not corrupted, so insidious is the effect of example, so quickly is one dragged to a lower level. I recall the concern, almost the anguish, of a wealthy manufacturer in Brussels who had large interests in other countries and was arrested in that month of September, charged with having sent letters out of the country. The *Polizei*, without any warning, appeared at his offices, overturned everything, bore off the company's books, correspondence, and papers, arrested the manufacturer and his son, and released them only on their depositing, as a kind of bail, 200.000 francs in cash. They were subjected almost daily to interrogatories, a host of agents pried into all their affairs ; finally they were informed that they were to be tried by court martial. The poor manufacturer, sitting there telling me his experiences, was so troubled and worried that he repeated every sentence twice in identical words, producing a most curious effect : "*Nous avons constaté ... nous avons constaté.*" "*Ils ont fait leur perquisition ... ils ont fait leur perquisition.*" "*Ils ont tout bousculé ... ils ont tout bousculé.*"

He contrived finally to escape prison, though most were not so fortunate, but he did not escape a heavy fine and may have lost the trade secrets of his company in those numerous perquisitions.

Such instances of personal indignity and injustice, arising from individual infractions of the German rides or offences against German prejudices, were, as I have just said, common ; they were happening all the time. But during the history of the occupation there were from time to time other instances of injustice that directly challenged those principles of human liberty that are the efflorescence of the culture and the civilization of Latin and Anglo-Saxon peoples, and they provoked that kind of resistance to tyranny which in English history is exemplified by the refusal of Pym and Hampden to pay the ship-money, and in our own by that of our forefathers in the Boston Tea Party when they refused to be taxed without representation.

Léon Théodor, the *Bâtonnier* of the Brussels Bar, was a kind of Belgian John Hampden himself. In the same month of September of which I have been writing *Maître Théodor* was arrested and confined in the *Kommandantur*. The arrest was the inevitable sequel to the incidents that had occurred in the spring, and because of the courageous mariner in which he had defended the rights not only of the lawyers but of the courts and the nation, and of those principles upon which, in liberal nations, courts rest, *Maître Théodor* had been elected *Bâtonnier* for a third term by his associates at the Bar, of whose long traditions he had been indeed the worthy upholder.

It was no surprise to any one acquainted with events in Belgium, and above all no surprise to the *Bâtonnier* himself, when he was arrested. His fearless attitude, his insistence the independence of the courts and the Bar ; his devotion to right, to justice, to law, and especially to international obligations, could have no other result. The Germans found the *Bâtonnier's* presence uncomfortable and galling, and had waited only an opportunity to rid themselves of the brave, undaunted spirit.

*Maître Théodor* was arrested on Wednesday and taken before the German officer who acted as *juge d'instruction*, or examining magistrate, for that

preliminary interrogation with which all their proceedings began. The offence charged against the Bâtonnier was that he had advised a certain lawyer at Brussels, Bremeyer, not to represent a certain German then being sued, or about to be sued, in the Belgian courts. The proof adduced by the German authorities that this undefined offence had been committed by Maître Théodor consisted of a letter written by Bremeyer in which he said that the Bâtonnier had so advised him. It was with this charge, and with such evidence to support it, that the *juge d'instruction* confronted the Bâtonnier and asked him what he had to say in his defence.

The fact, of course — as any one acquainted with Maître Théodor, or any one knowing his position in Brussels, would at once have assumed — was that the Bâtonnier had given the lawyer no such advice ; as Bâtonnier of the Order he had no right and no reason to give advice, much less injunctions as to what cases lawyers should accept or not accept, and so he might easily have denied the charge. But he assumed another attitude, consistent with his dignity, his position, and his patriotism.

*"As a lawyer, and as Bâtonnier of the Order", he replied, "I am responsible for my conduct only to the Court of Appeal ; if the Procureur Général of that court were to interrogate me as to the allegations I should consider it my duty to respond. But I have no explanations to make, and I am, not responsible for my conduct to a German military tribunal."*

Here, as might have been expected, the "trial" ended.

Governor-General von Bissing himself, who was said by some to be waiting in an antechamber while the proceedings were in progress, and at any rate was not far away, decided at once that, "in view of the fact that this influence on the Bar of Brussels and on the different Bars of the country constituted a danger for the German army", Maître Théodor was to be deported to Germany. A few days' solitary confinement at the *Kommandantur*, with two armed sentinels day and night, a moment in which to bid his wife good-bye, and on Sunday the brave Bâtonnier was taken off to his prison beyond the Rhine.

Whatever may be said of the justice or of the legality of the judgment, it no doubt set forth an indubitable fact if Maître Théodor did not constitute in the military sense a danger for the German army, he constituted a danger for the whole system that was embodied in the German army, just as spirits like his, understanding and loving liberty, have constituted at all times a danger to autocracy. Indeed, nowhere could there be found two men who more ideally represented the two opposing systems in the world than those two who were separated by a wall that day — Théodor in the court-room, Von Bissing in the antechamber. They were the best that the two systems could produce, and it was not on the word of some piqued lawyer that Théodor was sent into exile and to prison, but because the Governor recognized in the keen penetration and insight of this slender man with the delicate features, the charming smile, the gracious and polished address, the white hair and beard and flashing eyes, one of the most dangerous of all Germany's enemies in Belgium.

The Bâtonnier wrote in all four letters that have an historical significance in the occupation of Belgium. I have given three ; the fourth was written in September 1915, and it was that letter, and not the mere statement of the lawyer Bremeyer, which determined his arrest. It was a protest, addressed to Von Bissing himself, against the lifting by German police agents and spies of the Chambers of lawyers, where they hoped to secure possession of documents belonging to persons they suspected or disliked. The terror was in full swing in Belgium ; domiciliary visits were made daily, the *Polizei* were

ransacking houses everywhere and all the time. There was a noted case in Belgium which involved the succession to the estate of the late King Léopold II.

Shortly before his death Léopold II endowed the Niederfullbach Foundation, turning over to it some of his properties in the Congo. At his death, on December 17, 1909, he left a fortune of twenty millions of francs, to be divided in equal parts among his three daughters, the Princesses Louise, Stéphanie, and Clémentine. The Princesses Louise and Stéphanie then brought suit to recover the property with which their father had endowed the Niederfullbach Foundation. The Belgian courts refused their demand but declared the Foundation illegal and void and, under the Belgian law, attributed to the Belgian State almost the whole of the Foundation. An amicable agreement was arranged in the year 1913 by M. Henri Carton de Wiart, Minister of Justice, between the Belgian State and the three princesses, by the terms of which the State ceded to the princesses a part of the patrimony of the Foundation, thus assuring each of the princesses a capital of from seven to eleven millions of francs. This agreement was made definitive by a law voted almost unanimously by the Belgian Parliament, and it had just become effective when the war came on.

German police forcibly entered the offices of Maître Wiener and Maître Alexandre Braun, attorneys in the case, and seized and bore away their dossiers, in order, it would appear, to secure information of value to persons in Germany who claimed pecuniary interests in the estate. Maître Théodor wrote a protest to the Governor-General in which he invoked the doctrine of privileged communications and raised the question of professional secrets, pointing out that the dossiers of attorneys, under civil law, were secret and privileged, that even a police magistrate (*juge d'instruction*) under the Belgian law had not the right to seize them ; that the documents in the dossiers were not the property of the attorney but that of his client, and that the attorney was only the confidential depositary of them.\*

Such a spirit, with its logic, its insight, and its courage, under a regime of irresponsible autocracy was not only troublesome, but "*dangerous*" and "*undesirable*".

## **Brand WITHLOCK**

London ; William HEINEMANN ; 1919.

\* EXCELLENCE, — J'ai reçu de Monsieur l'Avocat Francis Wiener la lettre dont j'ai l'honneur de vous transmettre ci-joint la copie.

Elle vous apprendra que des fonctionnaires allemands se sont présentés chez mon confrère et ont exigé sous la menace d'une perquisition, c'est-à-dire de l'emploi de la force, la remise entre leurs mains de dossiers relatifs à des procès civils plaidés par son regretté père M<sup>e</sup> Sam Wiener.

Ci-joint également copie d'une lettre de Monsieur l'Avocat Alexandre Braun, ancien Bâtonnier de l'Ordre, chez lequel les mêmes faits se sont passés.

Comme Chef de l'Ordre, je proteste respectueusement, mais avec la dernière énergie, contre cette violation des immunités du Barreau et des droits des tiers.

Le cabinet de l'avocat doit être tenu pour sacré. Les dossiers que celui-ci détient ne sont pas sa propriété ; ils sont la propriété de ses clients. Ils constituent entre ses mains le plus inviolable des dépôts. Ils reposent dans ses archives sous le sceau du secret professionnel.

Le secret professionnel est à la base de notre profession. Il est la condition nécessaire du Droit de défense, lié lui-même indissolublement à l'administration de la Justice. Il permet au client de se livrer, sans avoir à craindre d'être jamais trahi ; de tout dire, de tout révéler, jusqu'aux plus intimes secrets de sa vie, avec la certitude que rien ne sera connu de personne. Le secret confié à un avocat devient le secret du tombeau.

A personne il n'appartient d'essayer d'obtenir de l'avocat qu'il livre la confiance qu'il a reçue. Aucune puissance au monde n'a le droit de forcer ce suprême asile de la détresse humaine.

L'inviolabilité qui couvre les confidences orales en couvre aussi l'expression écrite. Tout document, tout dossier remis à un avocat ou formé par lui, participe de la même inviolabilité. Celle-ci s'étend au cabinet de l'avocat lui-même.

Ces principes sont admis dans notre législation et dans nos moeurs comme des axiomes. Aucun détenteur de l'autorité, fût-il Ministre du Roi, n'oserait, sous quelque prétexte que ce soit, songer à y déroger. La Justice elle-même s'arrête devant cette barrière infranchissable. Le Juge d'instruction, armé de pouvoirs souverains quand il s'agit de la recherche des délits et des crimes — devant lequel toute porte doit s'ouvrir — qui a le droit de pénétrer dans l'intimité de la vie et du foyer des citoyens, s'arrête au seuil du cabinet de l'avocat. Il n'y pénètre qu'accompagné d'un délégué du Bâtonnier. Ce délégué n'a pas pour mission de protéger l'avocat, auteur ou complice présumé d'une infraction — le secret professionnel ne couvre aucune défaillance ; il se substitue d'office à l'avocat mis en cause et représente vis-à-vis du Juge d'instruction les immunités de l'Ordre et les droits des tiers.

L'Avocat appelé à déposer en justice doit refuser son témoignage s'il est interrogé sur ce qu'il a appris, vu ou connu en sa qualité d'avocat.

Les lettres échangées entre avocats ne peuvent, même du consentement de leurs auteurs, être produites dans un débat judiciaire, si ce n'est de l'assentiment du Bâtonnier.

Toute notre organisation du Droit de défense se meut dans cette atmosphère de confiance illimitée et de sécurité absolue, indispensable aux relations d'Avocat à Avocat ou d'Avocat à client et à la bonne marche de la justice. Elle autorise les confidences et les aveux, parfois si pénibles et si douloureux. Elle permet à l'Avocat de saisir la trame profonde des actions humaines et de se faire le conseiller sûr de ceux qui se confient à lui. Elle permet à l'Avocat, avant tout débat public, de discuter avec son confrère, dans l'abandon de l'intimité, en vue d'arrangements amiables ou de transactions, sans crainte de surprise.

Ainsi compris et pratiqué, sous le contrôle d'ailleurs de la discipline des buts de notre profession et achève de donner au rôle social de l'Avocat son caractère de haute dignité et de noblesse.

Cette loi du secret professionnel imposé à tous, dans un intérêt social supérieur, n'a pas été respectée par vos agents.

En se faisant remettre de force des documents confidentiels, dans le but d'en prendre connaissance, de les copier ou de les photographier, ils se sont appropriés, sans droits, leur contenu.. Ils ont violé un dépôt aux mains de ceux qui en avaient, sous les sanctions de la loi, de leur honneur et de leur conscience, assumé la garde et la responsabilité. Le restitution des pièces saisies n'enlève rien de la gravité des faits accomplis.

Rien, au surplus, ne justifiait la mesure prise. Aucune nécessité de guerre ne l'imposait. Les dossiers saisis sont relatifs à des affaires civiles terminées. Les avocats en cause n'étaient personnellement l'objet d'aucune poursuite et c'est à leur seul titre de détenteurs des dossiers qu'ils ont été inquiétés.

Cette atteinte à nos immunités aura un retentissement douloureux au sein de tous les Barreaux. Si elle devait constituer un précédent couvert par l'autorité, c'en serait fait de notre ministère comme d'ailleurs du rôle de la Justice elle-même.

La Justice vit de sécurité, d'indépendance et de liberté. Exposée à des coups de force, elle ne peut se voir condamnée à un rôle d'opposition inconciliable avec la dignité de ses fonctions. Vinculée et soumise, elle ne serait plus qu'une justice déchue.

C'est pourquoi je proteste.

Je proteste au nom de notre Droit public, au nom du Droit naturel, au nom du Droit des gens.

La Convention de La Haye a placé notre vie civile sous la haute protection du pouvoir occupant: la vôtre. J'y fais appel. Je la réclame comme un droit. Je prie Votre Excellence d'agréer l'assurance de ma haute considération.

Le Bâtonnier de l'Ordre, L. Théodor,

À Son Excellence Monsieur le Baron von Bissing,

Gouverneur général en Belgique.

### **Translation**

EXCELLENCY, I have received from the Advocate Francis Wiener the letter of which I have the honour to send you herewith a copy. It will apprise you that the German functionaries presented themselves at the home of my colleague, and, under the menace of a domiciliary visit, that is to say, by the use of force, they compelled him to place in their hands the files relating to the civil suits pleaded by his lamented father, Mr. Sam Wiener.

Herewith, you will also find copy of the letter from the Advocate Alexandre Braun, former Bâtonnier of the Order, at whose home the same thing happened. As Chief of the Order, I protest respectfully, but with the greatest energy against this violation of the immunities of the Bar and of the rights of third persons.

The office of the lawyer must be held sacred. The files which he holds are not his property ; they are the property of his clients. In his hands they constitute the most inviolable of deposits. They remain in his archives under the seal of professional secrecy.

Professional secrecy is the basis of our profession. It is the necessary condition of the right of defence, imited itself indissolubly to the administration of Justice. It permits to the client to abandon himself without fear of ever being betrayed ; to say all, to reveal all, even the most intimate secrets of his life, with the certainty nothing will ever be known by anybody. The secret confided to a lawyer becomes the secret of the tomb.

Nobody has the right to try to compel the lawyer to give up the confidence that he has received. No power in the world has the right to force this last asylum of human distress.

The inviolability which covers the oral confidences covers also the written expression of them. Every document, every file given to a lawyer or formed by him, partakes of the same inviolability. This reaches to the cabinet of the lawyer itself.

These principles are admitted in our legislation and in our customs as axioms. No one holding authority, even were he a Minister of the King, would dare, under any sort of pretext, to dream of any infringement of them. Justice herself halts before that insuperable barrier. The Magistrate, armed with sovereign powers when it is a question of searching for wrongs and crimes, before whom every door must open, who has the right to penetrate in the intimacy of the life and of the homes of citizens, stops at the sill of the lawyer's chamber. He can penetrate there only when accompanied by a delegate of the Bâtonnier. It is not the mission of this delegate to protect the lawyer, the presumed author or accomplice of any infraction of the law — the professional secret covers no weakness ; he instantly takes the place of the lawyer concerned, and in face of the magistrate represents the immunities of the Order and the rights of third persons.

The lawyer called to testify in court must refuse his testimony if questioned as to what he has learned, seen, or known in his capacity of lawyer.

Letters exchanged between lawyers cannot, even with the consent of their authors, be produced in a judicial debate unless the consent of the Bâtonnier has been obtained.

All our organization of the right of defence works in this atmosphere of unlimited confidence and absolute security, indispensable in the relations of lawyer to lawyer, and of lawyer to client, and to the progress of Justice. It makes possible those confidences and those avowals that are sometimes so painful and so sad. It permits the lawyer to comprehend the obscure workings of human action, and to become the counsellor on whom those who confide in him may rely. It permits to the lawyer, before any public debate, to discuss with his *confrères*, in unrestrained intimacy, friendly arrangements or transactions, without fear of surprise.

Thus understood and practised, under the control besides of the discipline of the authorities of the Corporation, professional secret remains one of the most beautiful attributes of our profession, and finishes by giving to the roll which the lawyer plays in society his character of great dignity and nobility.

This law of professional secrecy, imposed upon every one in the superior interest of society, has not been respected by your agents.

In compelling by force the delivery of confidential documents in order to learn what is in them, to copy them or to photograph them, they have taken without any right their contents. They have violated a trust in the bands of those who, under the sanctions of the law, of their honour and their conscience, have assumed the guard and the responsibility of it. The restitution of the papers that were seized does not take away in any degree the gravity of the accomplished facts.

Nothing, besides, could justify such measures ; there was no necessity of war to do such a thing ; the files that were seized related to civil affairs that are already closed. The lawyers in question were not personally the object of any suit, and it is only because they had possession of the files that they were troubled.

This violation of our immunities will make a painful impression everywhere in the Bar. If it should constitute a precedent covered by authority, our ministry as lawyers would be done for, as well as Justice herself.

Justice lives by security, by independence, by liberty. Exposed to violence she finds herself condemned to a roll of opposition which is irreconcilable with the dignity of her functions. Enchained and enslaved, she would be nothing more than a fallen justice.

This is why I protest.

I protest in the name of our public law, in the name of natural law, in the name of international law.

The Convention of The Hague has placed our civil life under the high protection of the occupying Power : yours. I appeal to that. I demand it as a right. Please, accept, Excellency, the assurance of my high consideration.

The Bâtonnier of the Order, L. THÉODOR.

To His Excellency Baron von Bissing, Governor-General in Belgium.

**Footnotes.**

Chapter **LXIII**. « *Bâtonnier Théodor* » :

<http://idesetautres.be/upload/BRAND%20WHITLOCK%20BELGIUM%20UNDER%20GERMAN%20OCCUPATION%201%20CHAPTER%2063.pdf>

Chapter **LXIV**. « *The decision* » :

<http://idesetautres.be/upload/BRAND%20WHITLOCK%20BELGIUM%20UNDER%20GERMAN%20OCCUPATION%201%20CHAPTER%2064.pdf>

It would be interesting compare with what **Paul MAX** (cousin of the *bourgmestre Adolphe MAX*) told about the same day in his *Journal de guerre* (*Notes d'un Bruxellois pendant l'Occupation 1914-1918*) :

[http://www.museedelavilledebruxelles.be/fileadmin/user\\_upload/publications/Fichier\\_PDF/Fonte/Journal\\_de%20guerre\\_de\\_Paul\\_Max\\_bdef.pdf](http://www.museedelavilledebruxelles.be/fileadmin/user_upload/publications/Fichier_PDF/Fonte/Journal_de%20guerre_de_Paul_Max_bdef.pdf)