

MÉTHODOLOGIE ET ÉPISTÉMOLOGIE DU DROIT COMPARÉ

Diverses méthodes et écoles

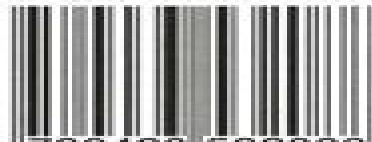
Yenny Vega Cárdenas

Cet ouvrage identifie les méthodes et les outils les plus importants pour s'aventurer avec succès dans le monde de l'analyse juridique comparative, tant dans le milieu académique que dans la pratique du droit, tant privée (notaires ou avocats) que publique (fonctionnaires, juges et législateurs).

Il aborde tout d'abord les origines et les objectifs du droit comparé et explique les différents niveaux de la comparaison juridique. Ensuite, en systématisant les diverses écoles et méthodes existantes, le présent ouvrage contribue à l'édification et à la structuration de la méthodologie du droit au niveau mondial. Il innove, non seulement par l'illustration de plusieurs méthodes développées par une grande diversité de comparatistes, mais aussi en proposant une nouvelle approche de décolonisation du droit. Finalement, l'auteure propose une feuille de route par laquelle elle amène le chercheur étape par étape vers une étude comparée structurée, qui lui permettra d'atteindre les objectifs de départ qu'il aura tracé.

Cette étude minutieuse est le fruit de plusieurs années de recherche et d'enseignement au Canada, à l'Institut Max Planck en droit international privé et comparé de Hambourg (Allemagne), à l'Université de Doshisha (Japon), à l'Université de Padoue (Italie), à l'Université de Helsinki (Finlande), à l'Université d'Oslo (Norvège) et à plusieurs universités latino-américaines en Colombie, Costa Rica, Équateur et Mexique. Cet ouvrage offre ainsi une perspective pluraliste, diversifiée et multiculturelle du droit comparé.

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Epistemologie Du Droit

Christian Atias

Epistemologie Du Droit:

Épistémologie juridique Christian Atias, 2002 Que savent les juristes Que choisissent ils d ignorer Travaillant avec le droit ou sur lui ils se dotent de connaissances qu ils v rifient en tentant de se pr munir contre le risque d erreur quelles sont leurs sources d information Des th ories sont accueillies avec enthousiasme ou avec r serve d autres sont rejet es Tels sont les ph nom nes tudi s en pist mologie juridique Le savoir des juristes avocats avou s universitaires et autres enseignants du droit greffiers conseil d entreprises a ses lois et ses tendances ses mouvements ses crises

Épistémologie juridique et déjà-droit

Bjarne Melkevik, 2014 Si dans le monde juridique l epistemologie s oriente vers le role ingrat d un a priori pret a se transmuter ideologiquement en methodologie juridique en theorie de l interpretation ou simplement en modeletheorique preetabli nous avons un reel probleme epistemologique En consequence l objectif de notre livre se resume a reflechir sur ce probleme et a le faire sous l auspice d une interrogation qui est elle meme de l ordre de l epistemologie juridique Il faut imperativement critiquer et evincer autant que possible le recours ideologique a un deja droit un droit deja la d une facon ou d une autre et qui peut agir sans aucun acte deliberatif de creation en tant que justification fondation et ideologie dans le domaine du droit ou pire en tant que Ideo droit propre a ses investigateurs membres d une secte doctrinale Les trois essais que nous publions ici sous le titre Epistemologie juridique et deja droit cherchent a reprendre le terrain Ils presentent une critique en regle de toute fondation et fondationnalisme toute justification et procede justificatif et de toute tentative de faire de la theorie un paradigme pour l Ideo droit Il s agit evidemment d essais critiquesdans le sens de resistance aux chants des sirenes qui pareil au peril d Ulysse de l Odyssee d Homere peuvent bien etre envoutants et beaux mais qui provoqueront notre naufrage intellectuel et moral si nous ne nous tenons pas debout Il ne faut jamais ceder a la tentation de croire a l existence d un deja droit d un droit deja ici et la et magiquement present dans un monde objectif et pret a etre cueilli par notre theorie Il n y a aucune raison de ceder a l irrationnel il nous faut plutot resister protester et hurler epistemologiquement contre l irrationalite d un deja droit Bjarne Melkevik Doctorat d Etat en droit de Paris II est professeur titulaire a la Faculte de droit de l Universite Laval Quebec Auteur de Philosophie du droit Volume 1 2010 et Volume 2 2014 Habermas Legalite et Legitimite 2012 et Droit memoire et litterature 2010 Chez Buenos Books International il a publie Marxisme et philosophie du droit le cas Pasukanis 2010 et Droit et Agir communicationnel Penser avec Habermas 2012

Géographie du droit : Épistémologie, développement et... Collectif, 2016-11-24T00:00:00-05:00 Le pr sent ouvrage collectif rassemble des g ographes et des juristes autour d un dessein commun l intensification des changes entre les deux disciplines et des liens les unissant Ces auteurs contribuent ainsi au renforcement d un dialogue interdisciplinaire qui fait d j l objet d importants d veloppements th oriques au sein des pays anglo saxons Cette legal geography que nous avons traduit en fran ais par g ographie du droit a impuls la production de nombreux articles scientifiques et monographies au cours des derni res ann es Ce livre se veut la fois rassembleur regroupant des chercheurs francophones et anglophones g ographes et

juristes et diversifi dans son contenu et ce afin de t moigner du potentiel qu offre la poursuite d investigations scientifiques combinant un apport g ographique et juridique conjoint Il s agit donc d une fen tre sur l interface g o l gale lieu de rencontre de ces deux disciplines o espaces et normes se conjuguent dans le d veloppement de concepts et de dispositifs m

ethodologiques communs *Epistemologie Juridique et Deja-Droit* Bjarne Melkevik,2014-03-25 Si dans le monde juridique l pist mologie s oriente vers le r le ingrat d un a priori pr t se transmuter id ologiquement en m thodologie juridique en th orie de l interpr tation ou simplement en mod le th orique pr tabli nous avons un r el probl me pist mologique En cons quence l objectif de notre livre se r sume r fl chir sur ce probl me et le faire sous l auspice d une interrogation qui est elle m me de l ordre de l pist mologie juridique Il faut imp rativement critiquer et vincer autant que possible le recours id ologique un d j droit un droit d j l d une fa on ou d une autre et qui peut agir sans aucun acte d lib ratif de cr ation en tant que justification fondation et id ologie dans le domaine du droit ou pire en tant que Id o droit propre ses investigateurs membres d une secte doctrinale Les trois essais que nous publions ici sous le titre pist mologie juridique et d j droit cherchent reprendre le terrain Ils pr sentent une critique en r gle de toute fondation et foundationnalisme toute justification et proc d justificatif et de toute tentative de faire de la th orie un paradigme pour l Id o droit Il s agit videmment d essais critiques dans le sens de r sistance aux chants des sir nes qui pareil au p ril d Ulysse de l Odyss e d Hom re peuvent bien tre envo tants et beaux mais qui provoqueront notre naufrage intellectuel et moral si nous ne nous tenons pas debout Il ne faut jamais c der la tentation de croire l existence d un d j droit d un droit d j ici et l et magiquement pr sent dans un monde objectif et pr t tre cueilli par notre th orie Il n y a aucune raison de c der l irrational il nous faut plut t r sister protester et hurler pist mologiquement contre l irrationalit d un d j droit

L'intelligence du droit : épistémologie juridique Melkevik, Bjarne,2021-12-15 Il convient d appeler au d veloppement de l pist mologique juridique Nous d fendons le besoin d une pist mologie juridique forte pour clarifier autant que possible notre fa on d envisager et d crire la science du droit la th orie du droit la doctrine du droit ou encore une quelconque criture se rapportant notre attachement au droit moderne Il s agit d une t che d autant plus importante que toute th orisation est nulle et malvenue sans un ancrage concret dans la r alit des individus qui acceptent de s en servir en tant que moyen de droit pour r soudre leurs diff rends leurs hostilit s et leurs d saccords Le probl me aujourd hui ce sont les pseudosciences avec leurs avancements leurs s ductions et leurs aveuglements Pendant longtemps le monde juridique a pu contempler distance le malheur des autres Avec une fausse assurance nous avons cru que cela n arriverait jamais dans les facult s de droit ni dans le domaine de la recherche juridique ni dans la science du droit D sarm s par cette s r nit nous avons h las baiss la garde abaiss notre vigilance pour un jour nous retrouver dans la m me obscurit que les sciences humaines et sociales face l obscurantisme aux faux fuyants th oriques aux pseudosciences pr tendant parler au nom du droit En ce qui nous concerne nous mettons un no pasar n nous r affirmons notre aversion profonde l gard de toutes les pseudosciences C est une insulte l intelligence juridique d o le titre de notre livre de s engager dans toute entreprise

pseudoscientifique dans toute activité qui n'a guère d'autre aboutissement que de gâter l'esprit et de affaiblir et de nullifier le juridique pour le peuple pour ceux qui ont le plus besoin que le système juridique et judiciaire fonctionne adéquatement et en toute justice *Re-penser la pensée du droit* Simone Goyard-Fabre, 2007 Réflexion sur les ordres juridiques et une nouvelle norme juridique

Épistémologie des croyances religieuses Roger Pouivet, 2016-10-14 Ainsi on le droit de croire en l'existence de Dieu Non répondent ceux qui veulent des preuves Oui affirme ce livre car nous avons le droit de croire même sans justification pistologique Cela n'a rien d'intellectuellement honteux contrairement ce que disent certains philosophes en parlant d'une théorie des croyances Une nouvelle question se pose alors à si on le droit de croire avoir eu une révélation et prétendre connaître ainsi la vérité Non répondent ceux pour lesquels la vérité ne peut pas être donnée par Dieu dans la Bible Oui affirme ce livre et qui plus est une pistologie peut démontrer la rationalité de notre croyance la révélation Dès lors peut-on faire comme si les affirmations du Credo étaient des fictions Est-il vrai que la religion est avant tout une affaire pratique et une forme de vie Non répond ce livre les arguments en faveur d'une conception non rationaliste de la religion sont faibles en revanche le rationalisme théologique peut être démonté Renouvelant ainsi la traditionnelle question de la relation entre foi et raison ce livre discute aussi bien les théories de saint Thomas de John Locke du cardinal Newman et de Ludwig Wittgenstein que celles de philosophes analytiques contemporains de la religion comme Alvin Plantinga Richard Swinburne Peter van Inwagen ou Linda Zagzebski

Épistémologie des études touristiques Lucie K. Morisset, 2012 Cet ouvrage met en question les enjeux pistologiques du tourisme Ne concevant pas le travail sur le tourisme et le travail dans le tourisme en vases clos les auteurs présentent l'objet touristique partir de divers champs disciplinaires que ce soit la géographie la science politique l'ethnologie la sociologie l'économie ou le droit

Epistémologie du droit Christian Atias, 1994

General Reports of the XXth General Congress of the International Academy of Comparative Law - Rapports généraux du XXème Congrès général de l'Académie internationale de droit comparé

Katharina Boele-Woelki, Diego P. Fernández Arroyo, Alexandre Senegacnik, 2020-12-17 This book explores convergences of legal doctrine despite jurisdictional cultural and political barriers as well as divergences due to such barriers examining topics that are of vital importance to contemporary legal scholars Written by leading experts from all continents its 26 chapters present a comparative analysis of cutting edge legal issues of the 21st century While each of the countries covered stands alone as a sovereign state in a technologically advanced world their disparate systems nonetheless show comparable strategies in dealing with complex legal issues Several of the chapters show how in addition to state normative production and state adjudication a growing panoply of non-state instruments and non-state adjudication are becoming more and more central to the legal field This book is a key addition to the library of any scholar wanting to keep abreast of the major trends in contemporary law Representing the current state of law in a vast range of areas it covers each topic from a comparative perspective Cet ouvrage en examinant des sujets d'une importance vitale pour les juristes contemporains traite des convergences de la doctrine juridique malgré les barrières jurisdictionnelles

culturelles et politiques ainsi que des divergences dues à ces barrières critiquées par de nombreux universitaires de tous les continents

ses 26 chapitres présentent une analyse comparative de sujets juridiques majeurs du 21^e siècle. Dans un monde technologiquement avancé bien que chaque pays analyse dans cet ouvrage demeure autonome en tant qu'état souverain l'ensemble des systèmes disparates présente néanmoins des stratégies comparables pour traiter des questions juridiques complexes.

En outre, plusieurs chapitres montrent comment en plus de la production normative et de la régulation des différents types de la panoplie croissante de différents types d'instruments non-tatiques et de régulation non-tatique, des différents devient de plus en plus centrale dans la sphère juridique. Cet ouvrage est un ajout essentiel à la bibliothèque de tout universitaire souhaitant se tenir au courant des principales tendances du droit contemporain. Il couvre un vaste domaine de sujets traités d'un point de vue comparatif et représente l'état actuel du droit dans chaque domaine.

Dictionnaire

D'épistémologie Génétique A.M. Battro, 2012-12-06

L'épistémologie génétique ne se confond pas avec la psychologie génétique et celle-ci n'est pas identique à la psychologie de l'enfant. Cette dernière étudie l'enfant pour lui-même tandis que la psychologie génétique cherche dans l'étude de l'enfant la solution des problèmes généraux tels que celui du mécanisme de l'intelligence de la perception, etc. car ce n'est qu'en analysant la formation de tels mécanismes que l'on parvient à fournir leur explication causale. En effet, en psychologie comme en biologie, l'explication est inseparable du développement. De même, l'épistémologie génétique a pour objet l'examen de la formation des connaissances comme telles, c'est à dire des relations cognitives entre le sujet et les objets. Elle fait donc la transition entre la psychologie génétique et l'épistémologie en général qu'elle espère enrichir par la considération du développement. Mais si l'épistémologie comporte toujours des présuppositions psychologiques, même dans les théories qui prétendent pouvoir négliger le sujet et réduire son activité à un simple langage, il s'agit donc de soumettre au contrôle de l'expérience et des faits. Il intervient en outre dans la théorie des connaissances, des considérations de logique ou d'algèbre générale, etc., qui ne relèvent plus de la psychologie mais de la formalisation ou de la déduction pure. L'épistémologie génétique est donc de par sa nature même une recherche interdisciplinaire où la psychologie génétique joue un rôle nécessaire mais nullement suffisant.

Autour de

l'épistémologie de la sociologie et de la sociologie des sciences : des débats, un réexamen, 2001 *The Canadian Journal of Law and Jurisprudence*, 2000

Epistémologie juridique

Christian Atias, 1985

The Oxford Handbook of

the Sources of International Law Jean d'Aspremont, Samantha Besson, Sévrine Knuchel, 2017-10-19

The question of the sources of international law inevitably raises some well-known scholarly controversies: where do the rules of international law come from? And more precisely, through which processes are they made? How are they ascertained and where does the international legal order begin and end? This is the static question of the pedigree of international legal rules and the boundaries of the international legal order. Second, what are the processes through which these rules are made? This is the dynamic question of the making of these rules and of the exercise of public authority in international law. The Oxford

Handbook of the Sources of International Law is the very first comprehensive work of its kind devoted to the question of the sources of international law. It provides an accessible and systematic overview of the key issues and debates around the sources of international law. It also offers an authoritative theoretical guide for anyone studying or working within but also outside international law wishing to understand one of its most foundational questions. This Handbook features original essays by leading international law scholars and theorists from a range of traditions, nationalities and perspectives reflecting the richness and diversity of scholarship in this area.

Jeu de la différence Le Pascal Richard, 2016-11-24T00:00:00-05:00

Laboration d'une théorie du droit comparé est rarement présente dans les travaux des comparatistes alors même que cette discipline devrait pourtant logiquement comporter un discours sur sa méthode et une réflexion sur son pistologie. La constance de ces carences est difficilement justifiable au regard d'un champ disciplinaire qui semble devenir incontournable. Cet ouvrage a pour objet de rendre compte du jeu de la différence présent au cœur des études comparatistes et d'apporter ainsi certaines réponses aux interrogations qui jalonnent le parcours du comparatiste. En ce sens le droit comparé est présent sous la forme d'une modalité particulière d'être des études juridiques, une sorte d'anamorphose de la théorie du droit ou d'asymptote du droit. Il apparaît comme le témoinage d'un cartier irréductible entre l'ouverture de la possibilité comme structure universelle et la nécessité d'terminer de telle ou telle localisation juridique. Ainsi le droit comparé se présente comme la promesse d'une rencontre la rencontre de l'autre. Cette discipline donne naissance à un labyrinthe qui différencie la présence de l'autre et de l'autre droit et permet dès lors de toujours tendre vers une compréhension plus grande de sa nature en évitant l'assimilation ou l'acculturation.

La confusion du droit et de la "science du droit" Aristoménis Kanellopoulos, 2018

Cette théorie interroge l'idée fondamentale dans la philosophie juridique française qui consiste à opposer formellement le droit et la science du droit. Cette opposition est l'application la recherche en droit du dualisme sujet/objet importé de la philosophie scientifique. Elle a conduit la pistologie juridique positiviste à terminer des règles strictes en vue d'accorder une véritable recherche scientifique sur le droit. Cependant les théories sémantiques qui poursuivent les lignes de l'opposition du droit et de la science du droit reposent sur des bases fragiles et contestables. En particulier la dissociation entre le langage juridique et le langage de la science du droit semble avoir été par la pistologie juridique en vue d'entretenir l'idée d'une science du droit. Il semble toutefois possible de concevoir la recherche en droit autrement qu'en ayant recours aux fondamentaux de la philosophie scientifique. La philosophie hermétique fondée sur le rapport sujet/sujet a été approfondie pour concevoir l'idée que le droit pour les chercheurs en droit consiste en une discussion laquelle il leur importe de participer. Dans ce cadre les prétentions scientifiques par les chercheurs en droit doivent être interrogées ainsi que les règles pistologiques qui encouragent la dissimulation d'un engagement dans la discussion juridique. Il importe au contraire de reconnaître la liberté des chercheurs en droit dans leur participation à la résolution de problèmes juridiques ainsi que de saisir l'éclectisme de la recherche en droit au sein d'une pistologie juridique démocratique. L'idée de science du droit est un obstacle à ces interrogations.

International Law as Social Construct Carlo Focarelli,2012-05-24 The book distils and articulates international law as a social construct It does so by analysing its social foundations essence and roots in practical and socially workable as opposed to pure reason In addition to well known doctrines of jurisprudence and international law it draws upon psycho analytic insights into the origins and nature of law as well as philosophical social constructivism The work suggests that seeing law as a social construct is crucial to our understanding of international law and to the struggle to create better working rules The book re conceptualizes both past and new doctrines of international law as constructs namely as strategies of concomitantly de mythologizing and re mythologizing international law Key areas of international law including subjects sources hierarchy values and remedies are shown to be part of this process The social impact on international law of transnational actors and stakeholders normative fragmentation global justice legitimacy of both rules and players dynamics and hierarchization of norms compliance and implementation in municipal law is also extensively investigated Five basic values of the international community namely security humanity wealth environment and knowledge are explored by stressing their inter and intra tensions Finally the analysis is extended to the role that international courts play in the prosecution of heads of state and other transnational players who violate international law

Legal Theory and the Social Sciences Maksymilian Del Mar,Michael Giudice,2017-07-05 Ever since H L A Hart s self description of The Concept of Law as an exercise in descriptive sociology contemporary legal theorists have been debating the relationship between legal theory and sociology and between legal theory and social science more generally There have been some who have insisted on a clear divide between legal theory and the social sciences citing fundamental methodological differences Others have attempted to bridge gaps revealing common challenges and similar objects of inquiry Collecting the work of authors such as Martin Krygier David Nelken Brian Tamanaha Lewis Kornhauser Gunther Teubner and Nicola Lacey this volume the second in a three volume series provides an overview of the major developments in the last thirty years The volume is divided into three sections each discussing an aspect of the relationship of legal theory and the social sciences 1 methodological disputes and collaboration 2 common problems especially as they concern different modes of explanation of social behaviour and 3 common objects including most prominently the study of language in its social context and normative pluralism

Law, Interpretation and Reality P.J. Nerhot,2013-04-17 PATRICKNERHOT Since the two operations overlap each other so much speaking about fact and interpretation in legal science separately would undoubtedly be highly artificial To speak about fact in law already brings in the operation we call interpretation EquaHy to speak about interpretation is to deal with the method of identifying reality and therefore in large part to enter the area of the question of fact By way of example Bernard Jackson s text which we have placed in section 11 of the first part of this volume could no doubt just as well have found a home in section I This work is aimed at analyzing this interpretation of the operation of identifying fact on the one hand and identifying the meaning of a text on the other All philosophies of law recognize themselves in the analysis they propose for

this interpretation and we too shall seek in this volume to furnish a few elements of use for this analysis We wish however to make it clear that our endeavour is addressed not only to legal philosophers the nature of the interpretive act in legal science is a matter of interest to the legal practitioner too He will find in these pages we believe elements that will serve him in reflection on his daily work

The Enigmatic Realm of **Epistemologie Du Droit**: Unleashing the Language is Inner Magic

In a fast-paced digital era where connections and knowledge intertwine, the enigmatic realm of language reveals its inherent magic. Its capacity to stir emotions, ignite contemplation, and catalyze profound transformations is nothing in short supply of extraordinary. Within the captivating pages of **Epistemologie Du Droit** a literary masterpiece penned with a renowned author, readers embark on a transformative journey, unlocking the secrets and untapped potential embedded within each word. In this evaluation, we shall explore the book's core themes, assess its distinct writing style, and delve into its lasting effect on the hearts and minds of those who partake in its reading experience.

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