

CHAIRE VILLEY 2019

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OUTLINE FOR THE FIRST SESSION

« The Rise and Fall of the Western Legal Tradition »

Jeudi 13 juin 2019, 16h-19h.

Institut Michel Villey.

Outline :

- I) Method and objectives
- II) The classical legal thought at the end of the 19th century: neutral private law and state neutrality
- III) The realist and CLS critique of private law in the 20th century: ideology, background rules and state action
- IV) Current usefulness of realist's and CLS' insights

I) METHOD AND OBJECTIVES.

- **Method of analysis: selection of sources and the research method in law.**
- **The concept of legal consciousness and the problem of unity within the system.**

Bibliography:

- 1) Duncan KENNEDY, *The Rise and Fall of Classical Legal Thought*, Beard Books, Cambridge, Washington DC (2006), Preface: Thirty Years Later.
Source : http://duncankennedy.net/documents/r&f_clt/Preface_Thirty%20Years%20Later.pdf
- 2) Duncan KENNEDY, « Three Globalizations of Law and Legal Thought: 1850–2000 », in *The New Law and Economic Development: a Critical Appraisal* 63 (David TRUBEK & Alvaro SANTOS eds., 2006).
Source : <http://duncankennedy.net/documents/Photo%20articles/Three%20Globalizations%20of%20Law%20and%20Legal%20Thought.pdf>

II) THE CLASSICAL LEGAL THOUGHT AT THE END OF THE 19TH CENTURY: NEUTRAL PRIVATE LAW AND STATE NEUTRALITY.

- **Creating the public-private divide and defending the minimal state**
- **Expression of this ideology in contract law**

Bibliography:

- 1) Duncan KENNEDY, « From the Will Theory to the Principle of Private Autonomy : Lon Fuller's "Consideration and Form" », 100 *Colum. L. Rev.* 94 (2000), p. 107 et s + p. 115 et s.
Source : <http://duncankennedy.net/documents/From%20the%20Will%20Theory%20to%20the%20Principle%20of%20Private%20Autonomy.pdf>

III) THE REALIST AND CLS CRITIQUE OF PRIVATE LAW IN THE 20TH CENTURY: IDEOLOGY, BACKGROUND RULES AND STATE ACTION

- **Questioning the public-private divide and state neutrality: conflicting considerations model, background rules of permission and how they directly structure economic struggle for resources**
- **A public law critique of contract law: redefining the freedom of contract**

Bibliography:

- 1) Duncan KENNEDY, « The Stages of the Decline of the Public/Private Distinction », 130 *Univ. of Pennsylvania L. Rev.* 1349 (1982)
Source : https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=4675&context=penn_law_review
- 2) Duncan KENNEDY, « The Stakes of Law, or Hale and Foucault ! », *Legal Studies Forum*, Volume XV, Number 4 (1991)
Source : <http://duncankennedy.net/documents/The%20Stakes%20of%20Law%20or%20Hale%20and%20Foucault%20%20J%20Leg%20Stud.pdf>
- 3) Duncan KENNEDY, « From the Will Theory to the Principle of Private Autonomy : Lon Fuller's "Consideration and Form" », 100 *Colum. L. Rev.* 94 (2000), p. 117 et s. (the external and internal critiques of the will theory)
Source : <http://duncankennedy.net/documents/From%20the%20Will%20Theory%20to%20the%20Principle%20of%20Private%20Autonomy.pdf>
- 4) Duncan KENNEDY and Marie-Claire BELLEAU, « La place de René Demogue dans la généalogie de la pensée juridique contemporaines », 56 *RIEJ* 153 (2006).
Source : <http://duncankennedy.net/documents/Photo%20articles/Rene%20Demogue%20dans%20la%20genealogie%20de%20la%20pensee%20juridique%20contemporaine.pdf>

IV) WHAT TO DO NOW?

- **What about Law and Economics?**

Bibliography:

- 1) Duncan Kennedy, « Law and Economics from the Perspective of Critical Legal Studies »
Source : <http://duncankennedy.net/documents/Law%20and%20Economics%20from%20the%20Perspective%20of%20cls.pdf>
- **CLS as a method for today's doctrine: feminism and race theory**