

CHAIRE VILLEY 2019

Duncan KENNEDY, Carter Professor of General Jurisprudence (Emeritus),  
Harvard Law School.

OUTLINE FOR THE SECOND SESSION

« Legal Reasoning and Adjudication »

Vendredi 14 juin 2019, 16h-19h.

Institut Michel Villey.

**Outline :**

- I) Terms of the debate
- II) Adjudication vs Legislation: The specificity of the judge's function
- III) The denial of ideology in adjudication and its consequences
- IV) The critique of rights

## I) TERMS OF THE DEBATE

- Ideology
- Liberalism/conservatism
- Legal elite/intelligentsia

## II) ADJUDICATION VS. LEGISLATION: THE SPECIFICITY OF THE JUDGE'S FUNCTION

- The distinction between legislation and adjudication from a CLS's perspective
- What are the specific constraints in adjudication? Questioning the CLS's theory of interpretation in comparison with the US and french realist approach

## III) THE DENIAL OF THE PRESENCE OF IDEOLOGY IN ADJUDICATION AND ITS CONSEQUENCES

- Meaning and scope of the myth of the presence of ideology in adjudication: Birth and survival of this collective denial
- Effects of adjudication in this context: moderation, empowerment, legitimation

## IV) THE CRITIQUE OF RIGHTS

- Use of rights in adjudication and the influence of partisanship
- Loss of faith in rights

### Bibliography:

- 1) Duncan KENNEDY, *A Critique of Adjudication (fin de siècle)*, Harvard University Press, 1998.
- 2) Duncan KENNEDY, « Une alternative phénoménologique de gauche à la théorie de l'interprétation juridique Hart/Kelsen », *Legal Reasoning*, Collected Essays, The Davies Book Publishers, Aurora CO, 2008 (trad. V. FORREY et A. GUIGUE).  
Source : <https://duncankennedy.net/documents/New/Une%20Alternative%20Phenom%20enologique%20de%20Gauche.pdf>

- 3) Duncan KENNEDY, « The Critique of Rights in Critical Legal Studies », in BROWN and HALLEY, eds., *Left Legalism/Left Critique*, Duke University Press, 2002.  
Source : <https://duncankennedy.net/documents/The%20Critique%20of%20Rights%20in%20cls.pdf>
- 4) Justin DESAUTEL-STEIN, « Structuralist Legal Histories », *Law and Contemporary Problems*, Vol. 78, No. 1, 2015.  
Source : [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2591956](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2591956)
- 5) Michel TROPER, « Chapitre XIX : Le problème de l'interprétation et la théorie de la supralégalité constitutionnelle », in *Pour une théorie juridique de l'État*, Presses Universitaires de France, « Léviathan », 1994, p. 293-315.