

Histoire des institutions judiciaires

Définition du sujet : pour définir l'institution judiciaire, on peut dire qu'il s'agit de l'organisation d'une société donnée pour arbitrer les litiges et faire appliquer le droit. En matière pénale, criminelle il s'agit de sanctionner les comportements interdits et d'assurer à la victime la réparation de son préjudice ; en matière civile c'est l'application des règles de droit entre particuliers.

L'utilité d'étudier cet histoire est d'essayer de détecter dans notre système actuel d'éventuels dysfonctionnements et de savoir si dans le passé on aurait pas un réservoir de solution qui pourraient être adaptables aujourd'hui.

Lorsque l'on veut mettre en place un institution judiciaire, toute société doit se poser 2 questions en matière de justice :

-Qui doit rendre la justice ? Cette missions doit-elle être à la charge de l'Etat, rendue dans le cadre d'une communauté plus réduite, ou rendue par des particuliers ? Procède-t-on à une élection des juges, forme-t-on des professionnels... Si c'est l'Etat doit-il choisir des fonctionnaires, des agents publics, des simples citoyens... doit-on avoir des tribunaux collégiaux, ou un juge unique ?

-Comment doit-on rendre la justice ? Doit-on laisser les citoyens saisir eux-même la justice, faut-il une forme de contrôle par les magistrats ? Doit-on laisser la victime saisir le tribunal ou doit-on citer l'auteur de l'infraction en droit pénal ? Quel procédure suivre ? Comment exécuter les jugements ?

Chapitre 1 : La république et l'empire romain (4e s av JC - 5e s)

Rome est incontournable en histoire judiciaire; les romains sont à l'origine de nos concepts juridiques et judiciaires. On trouve parfois des allusions chez certains auteurs une idée d'une théorie du droit romain, mais elles semblent erronés ; ils cherchaient plus à répondre à des questions pratiques.

Section 1 : rappel historique sur le millénaire romain

753 av JC, il y a la création de Rome, jusqu'en 476 après JC qui correspond à la chute de l'empereur romain (romulus augustus).

I - Les découpages chronologiques utilisés par les romanistes et historiens

-Royaute (-750 / -550) : dans la pensée romaine, c'est une royauté étrusque. A l'origine ils sont sous la domination d'un peuple voisin et dans l'imaginaire romain la monarchie est associée à une période humiliante. Ils auront toujours une gêne vis à vis de l'installation d'une royauté (notion d'empire).

-République (-550/-27) : les romains chasse les rois étrusques et mettent en place une république. Octave, neveu de César gagne une guerre civile et met en place l'empire.

-Empire (-27/5e siècle) : C'est un chamboulement, on bascule vers un régime + autoritaire.

Du p.d.v du droit, on a pas le même découpage, le droit romain n'est pas calqué sur les régimes politiques :

Histoire Des Institutions Judiciaires

Michael Seilmaier



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