

Introduction au Droit Public

Marie-Elisabeth **Baudoin**

- L'échec de la diplomatie de l'organisation des nations unies dans la crise syrienne.
- La crise liée aux migrants et l'incapacité de l'UE à gérer ce dossier.
- => Absence de l'État
- Mécontentement des agriculteurs et leurs revendications en France.
- Le surpeuplement des prisons françaises et le dysfonctionnement du système pénitencier.
- => Présence de l'État par sa défaillance
- Point commun : État en arrière plan, absent ou défaillant

L'État n'est pas mort, il n'est pas seulement source de conflit → sans État, pas d'organisation internationale ni aucune décision prise au niveau international ni national.

GEORGE BURDEAU → 1970 « personne n'a jamais vu l'État. Qui pourrait cependant nier qu'il soit une réalité ? La place qu'il occupe dans notre vie quotidienne est telle qu'il ne pourrait être retiré sans que, du même coup, soit compromise nos possibilités de vivre. »

ex : - arrêt au feu rouge par peur de sanction, ce n'est pas devant le policier qu'on s'incline mais devant l'autorité qu'il représente. Ce n'est pas la volonté de l'homme qui va déterminer notre comportement mais la puissance publique représentée par l'agent → L'agent n'est qu'un instrument.

- lorsque l'on est mécontent des ministres → les appréciations s'aggravent quand on estime que leur manquement à leur fonction est lié à une erreur humaine. → Ce sont des représentants de l'autorité qui ne sont pas titulaires de leur pouvoir.

=> Seul et vrai titulaire : L'ÉTAT.

Droit public = Droit de l'État

Définition du Droit public : ensemble des règles juridiques relatives à l'existence, à l'organisation, au fonctionnement et aux relations de l'État.

→ définition organique qui repose sur des institutions qui vont être les principaux auteurs et sujets du Droit public.

→ définition matériel : définir le Droit public comme Droit de pouvoir politique ou puissance publique.

I- Le Droit public est avant tout du Droit

Qu'est ce que le Droit ? → vient du bas latin « directum » : direction, directive / signifie normes de conduite/règles

Le Droit est l'ensemble des règles de conduite humaine édictées et sanctionnées par l'État et destinées à faire régner dans les relations sociales/sociétés l'autorité et la liberté.

Le Droit est l'instrument de l'État permettant de régler les rapports entre les individus qui composent une société.

A- La fonction du Droit : un mode de régulation sociale

Un adage latin dit : « Ubi societas, ibi jus, ibi societas, ubi jus. »

Là où il y a une société, il y a du Droit et dès qu'il y a du Droit, il y a une société.

Il ne peut y avoir de Droit que dans une société, mais dès qu'il existe une société, il y a du Droit.

Le Droit est un fait social et politique qui va permettre le bon fonctionnement d'une société.

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Lei Shi



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