

INTRODUCTION AU DROIT

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INTRODUCTION : La notion de droit – le rôle du droit de la vie économique

Le **DROIT OBJECTIF** est un ensemble de règles abstraites d'objectifs de conduite de l'homme en société et ces règles sont sanctionnées. Des règles existent que tout le monde doit respecter et si on ne les suit pas on est sanctionné. Il faut qu'il y ait une autorité pour imposer les règles et les sanctionner.

⇒ Pourquoi doit-on obéir à ses règles et est-ce qu'on doit toujours y obéir ? Pour y répondre on va chercher le fondement de la règle juridique.

Il existe deux écoles de pensées, les **doctrines idéalistes** et les **doctrines réalistes**.

1. Les doctrines idéalistes : le droit naturel

Elles sont fondées sur l'idée suivante : à la base des règles juridiques il existe un ordre supérieur. La règle juridique n'avait valeur que dans la mesure qu'elle est en accord avec cet ordre supérieur.

Si ce n'est pas le cas, il y a un réveillon contre la loi. Le **droit naturel** correspond à un **droit idéal imposé par la nature des choses, par la raison**.

Ex : un enfant à sa naissance ne peut pas se débrouiller seul, donc la raison nous dit que ses parents doivent s'occuper, donc le droit organise la protection des jeunes enfants par leurs parents. En pratique le droit naturel évidemment ne débouche pas forcément sur des lois. N'est pas tjrs à l'origine des lois. Ex : la protection des consommateurs, Montesquieu était un artisan du droit naturel

2. Les doctrines réalistes ou positivistes

- Opposées aux doctrines idéalistes.

Pour ces doctrines le **droit ne doit pas être discuté, il ne doit pas trouver un fondement naturel** Le **droit ne peut pas être susceptible d'être l'objet d'un jugement quelconque**. On doit donc se concentrer à les appliquer. On doit les accepter.

Ex : âge min pour conduire une voiture est 18 ans. On doit accepter cet âge minimum. On ne peut pas modifier la loi. Lorsqu'il y a des grèves les communes doivent accueillir les enfants, donc ils doivent appliquer cette loi. **MARX** faisait partie des positivistes.

Introduction Au Droit

C Cleary



Introduction Au Droit:

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