XVIIIth Conference of the *International Association of Legal Methodology*

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Theme

TO MAKE REFERENCE
THINKING LAW THROUGH THE PRISM OF AUTHORITY

"More than a wish and less than an order" (Mommsen, quoted by Arendt, 1972, p. 162), "authority is the capacity to exercise power over someone with their agreement, because they recognize its legitimacy" (Coenen-Huther, 2005, p. 136). Authority manifests itself through discourse, the exercise of a prerogative, decision-making or the permanence of an institution to which it's an apparent attribute. In so doing, it establishes the legitimacy of a body whose moral, scientific or political superiority is recognized by those who submit to it. However, authority cannot become "authoritarian" without changing it's nature, striping it from the aura of legitimacy that it naturally possesses, precipitating Authority into a regime of violence and power relations.

This lapidary definition draws our attention to a number of elements that make up authority. The first is the **verticality** that characterizes the relationship to authority. Verticality refers to a dissymmetry of positions, a hierarchical structure, the confirmation of a superiority, a position of overhang. This superiority is **based** - and this is the second element - on a symbolic authority linked to a form of transcendence. Modernity has privileged legality as a means of **legitimizing** domination, to use Weberian terms. Law is both an instance of legitimization and an instrument of domination, requiring a substantial foundation. In the legal sphere, this includes the legislator's will, the concept of justice and equity, respect for the rule of Law and legal certainty. This "foundational" logic is particularly evident in the importance of citations and referencing, which direct the jurist's gaze to the **past**. In the same vein, Bourdieu asserted as long ago as 1986 that "the logic of precedent, the foundation of the properly juridical mode of thought and action, (...) continuously links the present to the past and provides the guarantee that, barring a revolution capable of calling into question the very foundations of the juridical order, the future will be in the image of the past, that the inevitable transformations and adaptations will be thought of and spoken in the language of conformity with the past" (Bourdieu, 1986, pp. 15-16). Finally, authority proceeds through

signs and insignia whose meaning is socially shared. This leads us to shift our focus from the holder of authority to the recipients who recognize it. The term **community** is generally used to designate the group of people who recognize the symbolic relationship that unites them with authority. In this way, the legal community recognizes the authority of the Cour de cassation, a supreme court or a great author of legal scholarship.

Law relies on Authority and institutes its numerous forms, to the point where Law as a phenomenon cannot be understood without recourse to this notion. However, authority does not appear to be central in legal theory. Can we think, understand and describe the legal phenomena without referring to Authority? How are discourses of authority constructed in the legal sphere? What are its sources? How are legal communities constituted that adhere to authorized discourses? What role does referential practice play in the construction of legal authority?

To answer these questions, three main themes will be addressed.

1. Content of the Law: How does Law establish Authorities?

The 1804 Civil Code paved the way for the consecration of institutions (Property, Marriage, Contract, Family) and the legalization of authority figures (the "bon père de famille", who embodied parental authority and served as a benchmark for assessing behaviour), enabling the legal order to structure itself around a certain way of being in the world and perceiving it. Each branch of Law institutes authorities that form the basis of power relationships: administrative authority in public law, parental authority in family law, subordination in employment law. These institutions and legal concepts are so central and common that we rarely question the age-old forms of domination that underpin them. Social and intellectual movements such as gender and postcolonial studies, however, invite us to take a critical look at the power relations and value systems instituted by law, allowing for the analysis of forms of authority in the legal field.

And while the decline of Authority has become a cliché, it is remarkable to realize that this phenomenon endures in new forms and configurations. Such is the case with the regulatory authorities that have flourished since the 70s... *CSA, Cnil, Autorité des Marchés Financiers* (AMF) in France and Québec, *CREG* (*Commission de Régulation de l'Électricité et du Gaz*) in Belgium, all exercise regulatory authority in a world no longer governed solely by legal-bureaucratic rationality, but by a market logic that eludes traditional political-administrative regulation. They are sometimes created in response to major crises. For example, the *European Food Safety Authority* (EFSA) was created in 2002 in response to the mad cow scandal, and the *European Banking Authority* (EBA) has been active since 2011, three years after the 2008 financial crisis. The legitimacy of independent administrative authorities is founded on their expertise, not from their link to the government, from which they are

independent. What role do these new forms of regulation play in the legal system, and in particular in the production of soft-law standards? If their independence protects them *a priori* from the unpredictability of politics (the current US example shows us the fragility of this presupposition), the question arises as to their responsibility.

2. Dynamics of Law: How does Law rely on Authority?

Law does not only promote legal concepts. Authority is also consubstantial with its functioning. "*Auctoritas non veritas facit legem*" asserted Hobbes (1651). Legal practice is (self)referential. The jurist, whether lawyer, magistrate, teacher or notary, speaks in the name of Law. How does this referential dynamic work? From a very early stage, future jurists are taught the order of things in Law: the legal order is a coherent system that obeys to the rules taught in University. The legal system is pyramidal, legislative sources are hierarchical, and higher standards guide the application and interpretation of lower standards. The meta-norms of security and predictability, but also of common sense and moderation, are imposed on jurists. How are we to understand this dynamic if we obliterate authority in the workings of Law?

If there are any legal institutions that are difficult to conceive of without recourse to the notion of authority, it is courts and tribunals. The "judicial authorities" hand down judgements and rulings that are "res judicata". If the authority of res judicata attached to a final judicial decision is a recognized principle, what about the authority of case law? Despite a narrative that remains centred on legislative texts, the authority of case law, all the more so if it's repeated, enables the court to orientate its decision-making practice and serves as an argument to litigants and commentators. Where the authority given to *res judicata* is applied to the judicial decision, the authority of case law is attributed to the reasons for judgements. A similar phenomenon can be observed in *common law* based legal systems. In theory, the *ratio decidendi* of a case should in itself express the rule of law, but in practice, *obiter dicta* of supreme courts are generally followed as if they were binding. As we can see, authority given to decisions can lead to binding rules, in both Civil Law and *Common Law* systems, particularly when they emanate from Supreme Courts. As for the latter, their coexistence raises questions about the relationship between them. Do constitutional courts and supranational jurisdictions follow a logic of the last word, embodying a form of authority, or have they entered an era of Habermasian dialogue nourished by reciprocal influences?

The pyramidal, hierarchical representation of the legal system is fraught with meaning, since the hierarchical structure of the legal system - the judicial pyramid and the hierarchy of norms - institutes verticality rather than the circularity characteristic of "systems" in general. The move towards regulation in law and the legitimization of private forms of justice are prompting legal experts to take a fresh look at authority. How can we think about the processes of authority in the jurisdictional world when contractualization, negotiation and

dialogue, which are at the heart of dispute prevention and resolution methods, promote an horizontal relationship between justice and the litigants?

3. Theory and epistemology of Law: How is the epistemic authority of authors constructed?

"Law and case law are, to a certain extent, what the legal scholarship claims them to be! Doctrine is therefore the source that, in a way, envelops all the others" (Jestaz and Jamin, 2004, p. 6). The authority - some would say the moral authority - of *legal scholarship* can be observed in the legal practice of professionals and other authorities alike, to varying degrees depending on the legal order. The Supreme Court of Canada, for example, cites legal scholars in its judgments, and the Belgian legislature enlisted the help of academics to reform the Civil Code.

By adopting a position of neutrality that describes the state of the law, dogmatic discourse is adorned with a certain objectivity. However, there is always a "reference subject" who assumes the "authorial function", “the authorship and control of the discourse" (Cossutta quoted by Oger, p. 59). If this ethos of neutrality establishes the author's credibility, on what basis can the research undertaken be based? "Describing what the Law is": does it not lock the jurist in a role of epistemic legitimization of the deontic authority of legal sources?

Moreover, although we speak of "the" legal scholarship, it is not uniform. It covers a social space in which not all discourses on Law are equal. There are great authors (Fontaine, 2012) (and authors who lack credibility), authoritative opinions (and others who lack it), unavoidable references (and works that are not cited), definitive arguments (and others that are highly controversial). The weight of certain discourses, the appreciation of certain authors, points to a hierarchical structuring of the doctrinal field, as well as to the dynamics of consecration or rejection by the community of jurists and readers in general. While correspondence with reality is the ultimate criterion for the validity of scientific knowledge - with proof to back it up - doctrine is rarely based on what is, but on what should be. There are, of course, differing opinions on the interpretation of legal norms, but in the final analysis, what are the most authoritative opinions based on? What are the "authorization processes" (Oger,2021) of scientific discourse on law?

Directives for the proposals

Interested participants must send their written proposal before the **September 15th, 2025**. Proposals must have a bilingual title, contain a short summary (between 100 and 150 words) in French or English and mention the name and affiliation of the author.

The proposals should be sent to the following email address:

aimj-ialm2026@usherbrooke.ca

Selected participants will be invited to contribute to a collective publication. Although a proposal can discuss other issues than the ones described above, the scientific committee can give preference to proposals more directly related to the specific topics described above. Resources permitting, financial support may be offered to scholars who wish to participate.

Scientific Committee:

Julie Colemans Professeure associée Université de Liège	Mathieu Devinat Président de l'AIMJ Professeur Université de Sherbrooke	Clotilde Aubry de Maromont Professeure Université de Nantes	Nader Hakim Professeur Université de Bordeaux
Frederic Rouvière Professeur Université d'Aix-Marseille	Alexandre Flückiger Professeur Université de Genève		

Indicative bibliography

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Alain ERALY, *Authority and legitimacy*. Le sens du collectif. Érès, 2015.
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