

Droit & Philosophie (www.droitphilosophie.com)

Call for Papers

« **Evidence, the Law of Evidence and Democracy** »

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“Evidence” has struck the editorial board of the journal *Droit & Philosophie* as an interesting question, since the journal aims at exploring the boundaries between Law and Philosophy. In this respect, Evidence, and especially the construction of the law of evidence, proves to be a paradigmatic example of a notion, which is inextricably legal and philosophical, as well as a product of the modernity.

There is of course a relatively abundant literature on evidence, but the studies devoted to this notion are rarely transversal. The journal *Droit & Philosophie* proposes to consider the topic from a new perspective, by questioning the relationship between Law, Philosophy *within* Democracy: what are the status and function of evidence in a pluralistic political regime that favours procedures as means to define Truth and Right rather than taking their definition for granted? Moreover, how is it possible to understand the function of evidence if “fake news” have as much impact and effects as “real news”? Evidence and the structure of a body of law of evidence thus inevitably reveal something of our rationality, and of the possible coexistence of several forms of rationality. To take one example, “scientific hyper-rationality” seems counterbalanced by the correlative appeal of the court of the public opinion in democratic contexts.

In order to answer these questions, a first set of contributions could explore the “artificial” character of legal rationality from the legal history and/or from the history of legal thought point of view(s). Evidence also relates to the history of sciences (the double meaning of “evidence”, since the evidence is what proves – it affects one’s senses – but is also something that should be *admissible*, as empiricists such as Jeremy Bentham pointed out; the relationship between mathematics and the construction of a modern body of law of evidence¹ ; or the legal regulation of rumour through hearsay etc.). In this perspective, authors are also invited to address the question of the specificity of the legal meaning of evidence and of the law of evidence, compared to the other meanings of “evidence” in the fields of human sciences, as well as in exact sciences. Some contributions could study the status of evidence in legal argumentation, from a historical, analytical or rhetorical point of view, or in some specific disputes.

A second set of contributions could address the temporal dimension of the topic, by examining the role of scientific evidence in the resolution of disputes where the effects of the actions at stake cannot

¹ See, among others, B. SHAPIRO, « Law and Science in Seventeenth-Century England », *Stanford Law Review*, vol. 21, n° 4, 1969, p. 727-766.

be known with certainty. The use of evidence in law thus implies an epistemological reflection on the possibility of stating the existence of facts, or on the possibility to deny them, while their effects are merely probable: isn't it necessary to reverse the burden of proof when claims are based on risks that are not ascertainable or objectionable? How to describe legal disputes in which the conflicting interests are based on forecasts that are *per se* uncertain? Does the evidence then become a reasoning which does not have anything to do with historical or objective truth? Or is it, on the contrary, a fascinating testing ground for the presumption that "anticipates what is not proven"?² All these questions will also be asked from the perspective of predictive justice.

Finally, a set of propositions could address the question of a general theory of evidence as well as the conditions in which such a theory has emerged. This issue aims at having legal scholars (may they specialize in private or public law, or in legal history) exchange views with scholars in philosophy, in order to emphasize the deep interdependence between the two fields in regard with the construction of a modern law of evidence.

Abstracts, in French or in English, will have to be sent to the journal's address: droitphilosophie@gmail.com until **Saturday, October 20, 2018** (included). Their size should not exceed **6000 characters** (spaces included). They will be accompanied by a bibliography. In order to be submitted to the double-blind peer review, the files must be sent in an **editable format** (.doc, .docx, .odt).

Schedule

20 October 2018: Closing of the call for papers

20 November 2018: Acceptance/refusal letters to authors

1st June 2019: Submission of the definitive texts

November 2019: Publication of the electronic issue

First half of 2020: Publication of the book (Paris, Dalloz)

² Until proven otherwise. A. LALANDE, *Vocabulaire technique et critique de la philosophie*, Paris, PUF, 2010, « présomption ».