

## The Cultural Study of Constitutional Law: A Discussion with Paul W. Kahn

Speaker: **Paul W. Kahn**, Robert W. Winner Professor of Law and the Humanities, and Director of the Orville H. Schell, Jr. Center for International Human Rights at Yale Law School

Discussant: **Guillaume Tusseau**, professor at Sciences Po Law School, member of the Institut universitaire de France

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No legal system can be understood in isolation from the wider context in which it operates. In its historical, linguistic, economic, social, ethnic and religious aspects, this context determines both the form and the substance of the law. The same cannot be said of constitutional law, which is often presented as a law whose function is to define the form of existence of a political unit, i.e. its structure as much as its values and its project.

By way of example, there is no doubt that the circumstances resulting from the difficulties experienced by the Fourth Republic in facing up to the challenges it faced conditioned its thinking on the new constitution. At the same time, and in the opposite direction, no one can minimise the influence that a given law is likely to have on its environment. Nearly seven decades of implementation of the 1958 Constitution have undeniably solidified a specific political and institutional culture. As the weeks following the dissolution of 9 June 2024 have shown, the presidentialization of political life, the concern for governmental stability and the difficulty of thinking about governmental coalition have demonstrated the strength of certain habits of thought and ways of doing things which, far from being necessary, are the result of a gradual sedimentation.

As a result, the notion of culture is extremely complex. This is why the Association française de droit constitutionnel has decided to make it one of the central elements of its scientific programme. It is therefore pleased to invite you to a discussion with Paul W. Kahn, the author who gave rise to cultural legal studies at international level (*The Cultural Study of Law. Reconstructing Legal Scholarship*, Chicago, University of Chicago Press, 1999). According to Kahn, beyond positive law alone, the study of legal cultures takes as its subject the intellectual framework or fundamental beliefs that give specific consistency to the legal and political reality in which an individual or community finds itself. They over-determine the way in which legal phenomena, particularly constitutional ones, are approached. In his own words, « a cultural study of law [...] seeks to bring to self consciousness those background structures of meaning that are always already in place and which make possible the particular regulatory schemes over which we argue. » In other words, « the question that defines a cultural discipline of law is: What are the conceptual conditions that make possible that practice? » The aim is thus to uncover the presuppositions, the unthinking and even the biases that shape the way in which the Constitution is understood, in both common and scholarly perception.

By initiating this discussion, the AFDC intends to take the measure of the relative indeterminacy of the notion of culture and to clarify its contours. Identifying culture requires legal experts to use tools and methods with which they are sometimes unfamiliar. But this shift in focus holds out the promise of profoundly new studies. In particular, they will enable us to elucidate the functions of constitutional culture, between the internalisation of models of action and references, the legitimisation of legal knowledge and the protection of fundamental values. This inaugural seminar will therefore prove decisive for cultural constitutional studies in France.