

Résumés des contributions en anglais

SOCIOLOGY

Florence ABRIOUX

The increase in the supply and demand for labels: quantitative normative densification

Normative intensification can be seen in the quantitative increase in the supply of labels which are normative frameworks. The actors offering labels are more numerous and at the same time some are extending their offer.

Normative densification also occurs on the labelled sites: they oblige themselves to respect different standards when they request and obtain several labels.

The process is furthered by the competition between the sites and local organization as a network.

Normative densification produces positive effects (structuring of the sector, increase in the quality or even in the size of the offer). It also induces less satisfactory effects such as increased inequalities between sites, the uncertainty of the impact given the efforts required and the loss of meaning. The proliferation of labels does not help to distinguish the weight, quality or scope of one compared to another.

LAW

Philosophy of law

Denis GRISON

Normative densification, the point of view of a philosopher

In a world of ever greater complexity, while the future seems unpredictable and often threatening, we can seek in the multiplication of standards a shelter if not a recourse. But just how far is it possible to take normative densification? Is it really reasonable always to want to increase the number of laws and regulations and/or give them still greater weight? In this text, of a philosophical nature, I would like to show that if the normative densification can be a good way, it must be chosen wisely and never in any event without having explored the possibilities offered by the proper use of the laws and existing regulations. I would also like to introduce this concept of proper use as one of the keys of governance required in the fragile, complex and uncertain world where we will have to live throughout this century.

Emeric NICOLAS

Normative flows and normative densification

This contribution seeks to bring together the themes of normative densification and normative flows. More than results, a hypothesis is expressed here, namely that normative flows can be powerful, albeit intangible and subtle, factors of normative densification. Starting from the definition of normative densification, the hypothesis is put forward that, by their importance and their convergence, normative flows are involved in the process of increasing normative pressure. Quantitatively, normative streams act as densifiers by increasing, on the one hand, the volume of the normative mass in suspension in the normative space and, on the other hand, their potential for numerous combinations. Qualitatively, they are factors of convergence of normative themes and appear as tools for creating norms or principles through the repetition and vibratory resonance effects they generate. Over and beyond the quantitative and the qualitative, they are indicative of a general de-densification, in the sense where the increase in the normative mass reveals that modern legal normativity is running out of steam. But legal normativity, both materially dense and spiritually de-densified, does not disappear. Another form is taking shape: a fluid and liquid normativity. Normative densification through flows is a sign of stepping fully into the era of "societies of control".

Sébastien PIMONT

Normative densification and doctrinal writing of law

The work of doctrine contributes to the process of normative densification. Specifically, doctrinal writing of law is a technique that, by taking a norm to interpret it, adds words and in so doing even adds to its authority. Under the pen of doctrine, a norm acquires a density that it did not have before (more words, more authority). At the end of a process described in this contribution, the act of writing the law in fact registers the norm(s) that it interprets in the legal order. Thus, the authority of reason, that of the logic of the text in which such a norm takes its place, adds to the fear of a state sanction to ensure its effectiveness. Doctrinal writing of law is therefore not the neutral instrument that we imagine. On the contrary, as a silent force within the law, it makes each member of the doctrine an agent of normative densification. And it is, ultimately, a phenomenon that demands comments of a political or epistemological nature.

Theory of law

François BRUNET

Normative densification in law, a recognition process of legal rationality

Normative densification cannot be reduced to a proliferation of legal norms, nor to their technical rigidification. As a process for improving the essential quality of the law, normative densification corresponds to increased rationalisation, i.e. matching legal techniques with the values that the law serves, thanks to legal argumentation. In order to achieve greater density, the rationality of the legal discourse must be recognised as worthy of value, both by the authors of the norms and those at whom they are aimed.

Sandrine CHASSAGNARD-PINET

Globalisation, a factor of normative densification

The process of normative densification will be considered in the light of the process of globalisation in order to determine if a junction of these two phenomena can be established. Globalisation can be seen as a factor of normative densification in that it generates a proliferation of norms of varying range and normative force that are juxtaposed and superimposed to oversee transnational activities. However, in opposition to this multifaceted globalisation, a globalisation movement of the law is developing that is leading to its homogenisation. Thus the construction of this global law could contribute to densification of a different kind – qualitative rather than quantitative.

Amanda DEZALLAI

Normative de-densification with regard to obsolescence.

Reflections of a publicist

In public law, obsolescence is a process involving the non-application of the norm. It is thus a type of de-densification since it leads to the diminution or even the destruction of the effectiveness of a norm. The generally suspensive effect of obsolescence makes it possible to argue that obsolescent norms constitute a “phantom” law in that they are ineffective but still formally valid. Consequently, they could then be reactivated through a fresh process of densification. In this way, the life of a norm is represented by a sinusoidal curve and no longer by a straight line.

Frédéric DOURNAUX

Normative densification, a process in which law evolves

From a descriptive point of view, normative densification refers to an increase of normativity within the legal system. This fractal process, i.e. that can be observed in exactly the same way regardless of the scale under consideration, makes it possible to show how legal normativity increases, either by a norm acquiring legal status or by the emphasising the normativity of a norm or a set of already legal norms.

From a functional point of view, normative densification is a process in which law evolves through the constant pressure that it exerts on the legal system. On the one hand, normative densification precipitates the collapse of this system by increasing the normative disorder through the torrent of normativity it pours out, which compresses and jostles the existing norms and subjects them to greater competition. But this pressure, on the other hand, stirs up and forces norms to be renewed, constantly pressures them to adapt and reorganise. In doing so, the pressure that results from normative

densification is part of the constant dynamic of the legal system in its fight against entropy in order to preserve the effectiveness of its constituent norms and overall coherence. It is this very tension that forms the life of the law. Following the same logic, normative densification promotes the natural selection of norms most likely to adapt, those that, through their own selective advantages and by being better suited to the creative forces of the law coming from the social body, best resist normative pressure.

Normative densification thus shows itself to constitute an ambivalent process of evolution of the law which, in the same movement, destroys and regenerates it.

Émilie GAILLARD

Normative densification and future generations

Using the expression “normative densification” is part of the construction of a dynamic legal epistemology that is particularly necessary for our time. It helps to demonstrate processes of sedimentation, of transformation or even epistemological breaks that operate inexorably “in silence”. Normative densification makes it possible to trace conceptual genealogies and probe the dynamics of normative developments that are at work. It is particularly identifiable in the presence of processes of decompartmentalisation, hybridisation or even mutations of the law. The progression of the concept of future generations as well as a law of the future attests, just like a textbook example, to the interest of using a dynamic description of normative developments and their transformative effects on the legal field. On the one hand, normative densification makes it possible to consider future generations in law in a dynamic manner. It reflects processes of conceptual enhancement that prove to be matrix and systemic. On the other hand, the study of the normative densification of the law of future generations is a way to grasp processes of complex normative kinetics. Since it is itself movement, normative densification can reveal unity where normative incompleteness and dispersion would prevail in a statistical analysis. Phenomena of migration and normative releases become particularly identifiable. Perceived as law in the making, the law of future generations seems to follow a law of evolution in irresistible ascent.

Fleur LARONZE

Normative densification of the private norm according to legal pluralism

Understanding normative densification necessarily implies an interest in the private norm. The process of normative densification and the emergence of the private norm then appear to be intertwined. The phenomenon of normative densification is particularly well illustrated by the evolution of the private norm. From a non state norm, the private norm attains the status of legal norm and manages to gain legitimacy in the world of law. An in-depth analysis of the process of legal normative densification and its effects is needed. The legal densification process is described by the evolution from the legal status of something borrowed to the independent legal status of the private norm. The result is a phenomenon of fragmentation of the private norm that becomes a dual norm and a phenomenon of irradiation by the private norm of the traditional areas of application of the state norm.

Benjamin LAVERGNE

The normative densification of recommendations of independent administrative authorities

The normative densification of “recommendations” of independent administrative authorities is mainly through the action of the administrative judge. If their “normative force” drawn from their effectiveness is not disputed, for all that they cannot be likened to legal norms that are obligatory and recognised.

Given the lack of “pre-determination” of the normative value of these instruments (notably through the silence of the legislator when creating these authorities and empowering them to take such “atypical” action), and in light of their actual effects on those at whom they are aimed, the administrative judge will take it upon himself to perform their normative densification, understood as a process that transforms the legal status.

Through various graduated processes (admission of the responsibility of public power, indirect control, reclassification), the judge in effect allows these “recommended” patterns of behaviour gradually to reach the status of legal norm.

Emeric NICOLAS

The introduction of time into the concept of positivity. The invitation of normative densification to think of positivity as a process

The diversity of meanings generally attributed to the expression “positive law” is merely an implicit reflection the fact that positivity is the result of a complex process of normative densification. The conceptual tool of normative densification then encourages the idea of introducing the time factor to think of the concept of positivity as a process. For that very reason, legal positivity no longer appears as the attribute that a normative statement possesses or not, but as the result, subject to degrees and dependent on a plurality of heterogeneous factors, of a process of positivation.

Matthieu ROBINEAU

Codification and normative densification(s)

Pondering over codification makes it possible to understand and illustrate what normative densification can be. In a first approach, it appears to combine three distinct phenomena: Normative thickening, which means the gradual coming to the normative world, normative strengthening, which corresponds to an increase in normative force, and normative tightening, which expresses the idea of multiplication and refinement of the norms governing an activity, that is to say the idea of an ever tighter normative mesh. As a result, normative densification may be seen as a process of evolution of the legal normative order which is characterised by the advent, enunciation and promotion of ever-increasing legal norms. In a second approach, normative densification has a certain unity, both with regard to its actors and its factors. Basically, the idea of normative densification helps to understand many legal phenomena and, above all, to consider that the law is alive.

Catherine THIBIERGE

The normative densification of a measure: the example of the “hours equivalence guide” for lecturers and researchers

Through the particularly topical example of the equivalence guide, normative densification appears as an “incarnation” process of a measure – in the sense of emergence and realisation – through the gradual “accretion” of texts, interpretations, discourse and practices. A process in which each step is both an implementation of the impetus of the previous one and a new normative thrust, relatively independent and disconnected from the previous ones, coming to initiate the next step through hierarchical pressure and successive creative instrumentalisations. This creative process takes numerous guises and is capable of constant mutations in its form, feeding on the energy of the actors – creators and those at whom it is aimed – who, more or less consciously, activate its deep-seated energy, give it in part its normative force and therefore also hold the keys to its “de-densification”, if they realise that the normative mesh thus created generates more subservience and hindrances than it holds promises.

Far from being necessarily legal, or always legal, normative densification of the equivalence guide calls for particular vigilance on the part of legal experts because, by sinking into the bureaucratic and managerial maze, it creates the risk of cutting it off from the official text that led to its emergence, as happened at the University of Orléans.

HISTORY OF LAW

Pierre ALLORANT

The unknown vectors of the normative densification of municipal practices

The process of normative densification of municipal administrative practices has consisted in accompanying the condensation of local norms through the intensification of relations between prefectural officials, who are promoted on length of service, and the elected representatives, whose densified practice of multiple mandates entrenches the “downward descent of careers”. The minor municipal public figures, discouraged by the cumulative inflation of normative texts, but supported and supervised by their sub-prefectural chaperone, are the actors in the de-densification movement of infra-departmental constituencies, emptied of their local political clout. Decentralised officers of the State give priority to the densification of the municipal administrative mesh to the detriment of strict criminal norms.

The densification of local law has occurred from 1830 onwards through the moderate decentralisation that densifies the public discourse and gives weight to the small municipal actors who were previously unheard because they were too thin on the ground.

Normative densification, an “essential interaction”, is a cumulative process that manages to overcome the obstacles erected by communal fragmentation and by the shortage of human and financial resources of the municipalities ; its most important indicator lies in the double professionalization of the networks of elected representatives and prefectural officials, in a game of mirrors between the regulatory spur of municipal practices and the subject of the supervision. In post-revolutionary France, normative densification has tightened up what the uniformity of the municipal status had dispersed.

Pierre BELDA

An example of normative densification. Divorce during the Revolution

The example of divorce during the revolution is an opportunity to follow a law as it is being created. In this field, normative densification was made possible thanks to the conceptual transformations that appeared under the Ancien Régime (Old Order). After the introduction of divorce, the legislators, caught in an acceleration of the revolutionary process, wanted to change the institution. This inherently political “densification evolution” is not free of ideology, since the men of the Revolution saw the law as an instrument of regeneration of the individual.

Cédric GLINEUR

Normative densification and the history of labour law.

Genesis of a new branch of law

When it is applied to the history of labour law, normative densification, on the face of it, seems to be a mainly quantitative process. Until the end of the 19th century, labour law was dominated by a principle of contractual freedom inherited from the Revolution and which amounted to very little; it then built up gradually, bit by bit, under the pressure of external events related not only to the Industrial Revolution and its human and social consequences, but also to the advancement of democracy and the perpetuation of the Republican regime. The legislator then turned his attention to the heart of the employment contract to protect the worker, considered as the weakest part. Such intervention by the State was difficult to enforce, hence the rather slow densification. Moreover, it is more complex than it appears because it must be measured with regard to the nature of the norms it entails and which are numerous, be they of public origin such as law, regulation, jurisprudence, or of private origin such as collective agreements.

Philippe TANCHOUX

From iconographic conservation to the legal protection of our cultural heritage An illustration en abyme of “normative densification”?

The process of public preservation of cultural heritage in France, the result of a reflection that goes back to the Revolution of 1789, has long been limited to non legally-binding administrative interventionism. It was given recognition much later through the introduction of legal measures, in 1887 and 1913, which impose on any owner of a listed building a series of restrictive conservation easements in contradiction with the free use of the property as laid down in 1804. Normative densification that we call “formal” is therefore evident. But after 1913, the expansion of heritage content increased the number of objects legally subjected to these easements and caused a conceptual rethinking of this field, from the initial reference of historic monument towards the much wider notion of cultural heritage. In this way, the fields of the environment, urban planning and heritage come together following shared protection goals and transversal legal mechanisms in a form of densification that we call “material”. The force of the rules adapted to these objects – and areas to be protected – or to objectives being pursued (protection, promotion) oscillates between codes of good conduct and mandatory requirements that constitute the ultimate level of normative densification when non-binding directives prove ineffective.

Public and private international law

Gaël ABLINE

The normative densification of the general principles of international law

The example of the principle of *uti possidetis*

The general principles of international law stem from a double uncertainty. Their origin is mysterious, their independence is disputed with regard to custom. *Uti possidetis* constitutes a topical illustration. Examination of its consolidation as a norm of international law is instructive with regard to the idiosyncrasies of its process of normative densification and the theory of the sources. Its recognition by the ICJ as a general principle of international law based primarily on its stabilising functions has not put an end to the questions. Just like its supplementary nature, its relationship with the principle of self-determination remains problematic as it is subject to misunderstanding. The justiciability of *uti possidetis* enables it to continue to extend its normative densification; each time it is used as a rule for resolving territorial disputes, the international judge refines the legal regime.

Julien CAZALA

Attempts at normative densification in public international law.

The example of the activity of organs of control in the field of human rights

The instruments relating to the protection of human rights place great importance on soft law statements, in other words devoid of any binding force on the parties. Yet it is not uncommon for the behaviour of states, with regard to these statements, to be the subject of a follow-up, monitoring or control mechanism. These procedures are not intended to denounce violations, but to stimulate states in the proper execution of their commitments. It is then a question of finding out how these various bodies may be tempted in the exercise of their missions to carry out normative densification of these statements in order to impose obligations on states from non-binding statements. This attempt takes two routes. It is either to affirm the existence of an obligation or to affirm the binding nature of the observation made by the monitoring body. In both cases, it is nevertheless difficult to speak of the changing quality of the statement. These bodies have not been empowered to impose an obligation to comply when this is missing. Hence it will be for the most part to turn to unwritten sources of international law to assert that a non-binding written statement has a binding aspect in the moral or political dimension.

Bernard HAFTEL

Normative de-densification in an area of general relativity.

The example of mandatory provisions in private international law

Counter to the findings from the study of domestic law, private international law reveals a phenomenon of normative de-densification that is particularly visible in the presence of mandatory provisions. This phenomenon of the diminution of the normative force of rules of law is first and foremost the result of a state, peculiar to private international law: The diversity of legal orders in the world, which allows individuals to elude, to some extent, the organs of a given legal order and, as a result, the rules that this legal order considers applicable, albeit mandatory in principle. However, contemporary private international law also reflects a significant evolution, accompanying this state of relativity through an active process of normative de-densification, the legal order accepting in this case to set aside certain provisions, that are normally mandatory, in order to promote legal certainty and international harmony of solutions.

Gwenhaël LE BRETON-SAMPER

The normative densification of UNCITRAL model laws on arbitration and conciliation in international trade law

The normative densification of UNCITRAL model laws on arbitration and conciliation in international trade law follows a two-step process, the inspiration and the incorporation of these model laws into national legal systems. At each stage of the process, the densification of these norms is the result of state action. At the inspiration stage, the state action is the cause of the normative densification of these model laws from the moment the states choose to draw on these norms. At the incorporation stage, normative densification is also based on state action. But, in this case, states do not limit themselves to referring to these norms and take up their content as is. Through the study of this process, it appears that the normative densification of these model laws maintains a link with the quality of these norms, and this quality is judged in the light of the aim pursued by the parties to the

dispute when they choose the path of arbitration or conciliation: Using a procedure for resolving disputes, either judicial or amicable, that is effective and takes place outside state courts. Because, the more the states transpose as is the content of UNCITRAL model laws into national law, the more the normative densification of these model laws is increased, which suggests that the states consider that these model laws are good norms to ensure the effectiveness of arbitration and conciliation procedures, while limiting or avoiding the intervention of the courts.

Séverine MENÉTREY and Jean-Baptiste RACINE

The normative densification of the *lex mercatoria*

In spite of criticism regarding the inadequacy of its content and the excessive flexibility of its methods, the *lex mercatoria* continues to be enriched in more or less “spontaneous” fashion. The very content of the *lex mercatoria* has been densified through the development of learned law and the recodification of living law. Over and above the densification of the very substance of the *lex mercatoria*, its structure is marked by the evolution of its methods. This dual material and methodological process of densification is accompanied by a constitutive and “densifying” doctrinal discourse.

Sidy Alpha NDIAYE

Normative densification in public international law: The example of the resolutions of the Security Council

The normativity of resolutions of the Security Council is not disputed in international law. What is revolutionary is the resulting process of the renewal of the international context that has led to the resolutions of the Security Council taking on highly superior normativity. They have reached a stage in the field of their normativity in that they affect areas that were hitherto inaccessible. More and more they concern traditionally conventional subjects. In this way, the resolutions of the Council are not only intended just to govern specific situations, as they should normally do, but are more and more general. In so doing, normative densification refers to the process of transformation of the scope of the normativity of resolutions of the Security Council. This evolution marks the transition from localised, temporary and present normativity to a general and prospective normativity. In the hypothesis in question, the term refers to the process of accretion, not quantitative but in its extent, impact and scope, of the normative production of the Security Council, which acts like an international legislator.

European law

Romain BOFFA

The normative densification of decisions of the European Court of Human Rights

The study of the normative densification of decisions of the European Court of Human Rights reveals an increase in the scope of its decisions. In the past, the decisions bore the seal of relative authority of a matter that had been judged and were reduced to a pure declaration of violation, but now they contain a true norm that is liable to be imposed on states, whether or not they were party to the dispute before the Court. Such a process is all the more interesting to study as such densification is not based on any text. Analysis shows that it is basically the repetition of national solutions, requests and condemnations that lies at the heart of the normative densification of decisions of the European Court of Human Rights, in the same way as the belief in their binding nature. Finally, the recognition of the authority of the jurisprudence of the Court marks the emergence of a new form of custom, a European custom of human rights in Europe.

Anastasia ILIOPOULOU-PENOT

The normative densification of the Charter of fundamental rights of the European Union

The treaty of Lisbon, which came into force on 1st December 2009, confers on the Charter of fundamental rights of the European Union the binding nature that was refused during the Nice summit in December 2000. This “conquest” of the legal value is the result of a process by which the European institutions (the Commission in particular) were able to place the Charter at the heart of their discourse and their practice. The strategy of the political institutions and the determination of the Court of Justice to reveal the legal potential of the Charter are also proving to be crucial in the post-Lisbon era.

The objective is now to establish the constitutional authority of the Charter. The process of its normative densification is still ongoing.

Carine LAURENT-BOUTOT

Normative circulation: a vector of normative densification of human rights

Human rights are enshrined in a multitude of national and international texts. They are also interpreted by various jurisdictions and supranational supervisory bodies to ensure their compliance. In all likelihood, the resulting normative proliferation marks the origin of a process of normative densification of these fundamental rights. This process could have continued in an uncontrolled manner if the interpreters had not enabled the provisions of the texts that protect human rights, thus enriched with their interpretations, to travel to the heart of the various legal orders. This image, presented using the normal terminology of legal discourse, may be more judiciously portrayed in terms of normative circulation. Now, by opening up the legal orders, normative circulation becomes a vector of normative densification. More exactly, it guides the process of normative densification towards the substantial enrichment of human rights, whose authority is also reinforced. The jurisprudence of the European Court in relation to the right for respect of private and family life is a fair indicator of the effects produced by normative circulation.

Criminal law

Jacques LEROY

Defence and illustration of normative densification in criminal matters: the legal regime of police custody

When normative densification is applied to police custody, it takes three complementary and successive paths: densification beforehand through incentives, thanks to the jurisprudence of the European Court of Human Rights, followed by central densification by way of authority as a result of legislative action, and finally densification afterwards through the normative interpretation by the Constitutional Council.

Labour law

Benoît GÉNIAUT

Normative densification and juridification. The example of labour relations

By reintroducing the normative dimension of the law within the phenomenon of “juridification of labour relations”, the concept of normative densification makes it possible both to clarify the meaning and to define its limits. The process of normative densification can thus be understood as an amplification of the scope of the relations covered by the law, a tightening of the meshes of the law as its content is enriched, i.e. it becomes more specific and more diversified. This process faces three limits: normalisation – “the norm that distorts” -, ineffectiveness – “too many norms kill the norm” and indecidability – “the norm claims to govern everything, but does it have an answer for everything?” »

Farida KHODRI

The normative densification of the principle of equality of treatment

This article describes the shaping of a principle by “densification”: The principle of equality of treatment in labour law. It shows how, under the “pressure” of Community law and constitutional law, the Court of Cassation has led to the acceptance of this principle which not expressly established by any French legislation. It also shows how this process of “normative densification”, which is both formal (a singular process of emergence through changes in citations coupled with constitutive terminology) and substantive (affecting the content of the principle as well as its normative influence), affects the very nature of the principle which has evolved from an instrument intended to restrict the power of the employer into a technically independent true principle and rule intended to govern social relations of work in a constructive manner.

Constitutional law

Nicolas HAUPAIS

Political logics at work in constitutional normative densification

Normative densification in the constitutional field has many aspects. The notion of written Constitution does not appear to be consubstantial with the concept of the state, organised for a very long period with very little institutionalisation. Its emergence corresponds to very easily identifiable political objectives, enshrined in liberal philosophy. It is therefore the very concept of Constitution that is densified, in its substance and in its methods of control. This same political preoccupation is reflected in the other aspects of densification: “change of level” of a domain that acquires constitutional protection, intensification of the normative force of provisions contained in the constitutional text.

Administrative law

François PRIET

From normative densification to de-densification.

Remarks on the developments in French urban planning law

Normative densification may serve to explain both how urban planning law is shaped and its past or future development. As a process, normative densification may be pre- or post-normative, depending on whether the norm is merely in preparation or is part of the official legal norms, i.e. formulated, formal. In both cases, the aim is to achieve greater effectiveness of public policies, as well as greater legal certainty. Normative densification in the field of urban planning raises questions about its possible or necessary limits: it is not systematic, and there may be a reverse phenomenon of normative de-densification which raises many questions about its appropriateness and scope.

Pierre SERRAND

Normative densification and the administrative judge

The strengthening of the rules imposed on the Administration comes not only from texts. It is also the work of the administrative judge. This occurs when the judge creates a new rule or interprets an existing rule. But it also occurs when the judge augments his control over the actions of the Administration inasmuch as this strengthening of the control limits the freedom of the Administration by overseeing its action. Normative densification then appears, not through the intervention of an authority normally empowered to create legal norms (legislator, regulatory authority) but as a result of an authority that is supposed to apply existing law. This normative densification thus takes place in the opposite way to what is most often observed, since it comes from the bottom rather than the top.

Wojciech ZAGORSKI

The judge, excess of power and normative densification

Amid the growing normative disorder, it is difficult to overestimate the influence of circulars on administrative practice. This influence may be studied using the concept of normative densification. Firstly, it shows itself through a process of normative reinforcement: the circular, enacted by the hierarchical superior of its recipients, increases the normative force of the measure it conveys. Secondly, it contributes at the same time to the process of normative creation. Creating tangible norms first, because the circular oversees the enactment of individual decisions. Also creating abstract norms, because, under the guise of the legal interpretation, the circular sometimes conveys an original regulation. These phenomena threaten the legality and transparency of the administrative action. We shall see how they are controlled by the judge.

Private law and civil law

Aline CHEYNET DE BEAUPRÉ

Normative densification, a process of legal construction concerning housing

Civil law is apparently not very conducive to the identification of normative densification phenomena. Yet the “question of housing” seems to reveal the existence of a favourable breeding ground. Housing is associated, more or less directly, and in more than one way, with the right of ownership, a centuries-old institution. If housing regulations are extremely numerous, there is, strictly speaking, no “housing

law". In the same way, the recognition of a high level of protection of ownership makes it possible to speak of a "right of ownership"; housing, for its part, has in recent years entered the category of "rights of", in particular through the latest regulations concerning the "legally enforceable right to housing". Both from a quantitative point of view (multiplicity and heterogeneity of the rules applicable to or relating to housing) and from a qualitative point of view (consecration of a constitutional objective), housing reveals the existence of a veritable phenomenon of normative densification in a field of law where such processes are not common.

Stéphane GERRY-VERNIÈRES

The normative densification of professional norms

Professional norms follow a process of normative densification which manifests itself in two ways. On the one hand, the densification of professional norms is due to the extension of their field of action. Specifically, professional norms occupy the two main sectors, ethical and technical, of professional activity while expanding to enter more and more specific situations. On the other hand, the densification of professional norms comes from the intensification of their normative force. It is characterised both by the incorporation of professional norms in state sources and their reception by legal actors. As a result of this double action, professional norms gain a growing place and force in the legal order. The phenomenon is so rooted in the legal system that it seems inevitable. Consequently, it must be placed within guidelines so as not to be a source of unfair law.

Christophe LACHIÈZE

Normative densification around the consumer. Reflection on the relationship of consumer law and tourism law

The normative densification around the consumer may be understood as a process of strengthening the norms that protect the consumer. Tourism law appears at first sight to feed this process of normative densification by providing specific protection for the tourist consumer. But on closer examination, it may be noted that tourism law also reflects a certain concern to protect industry professionals, which sometimes leads it to oust certain rules of consumer law. Tourism law could thus spark a movement of normative "de-densification" around the consumer.

Marie-Daphné PERRIN

Normative densification through civil judicial practice

Is it possible that normative densification, that is to say completing certain rules to make them more efficient or more in line with the interests of those to whom they are meant to apply, or the increase in the number of rules result from civil judicial practice ? Numerous examples make it possible to answer this question in the affirmative. The participants in the trial, court officers, such as lawyers and ushers but also and especially the judge, are at the initiative of procedural mechanisms, in the sole interest of the litigant and the observance of the guiding principles of the civil trial. Without being able to enumerate and examine all of these practices which are intended to clarify an existing but in complete text with regard to reality or even to create a mechanism ex nihilo, this study is intended to show that these practices play a part in normative densification because they have been sanctioned by decisions of the Court of Cassation which have not been challenged or because texts have given them a legal or regulatory existence with its accompanying force.

Katsumi YOSHIDA

Normative densification and de-densification in Japanese civil law :

A reflection on land ownership and legal marriage

In the two areas under examination, namely the control of land ownership and family law in Japan, we note a common phenomenon : The emergence of new norms. This same phenomenon appears, on the one hand, in the field of land ownership as normative densification and, on the other hand, in the field of family law as normative de-densification . In the first case, the norms were not sufficiently robust. Moreover, there were not many of them. New norms would fill this gap and lead to normative densification. In the second case, a strong state norm already existed, legal marriage. The emergence of new norms then signified the relativisation of legal marriage and led to normative densification. The

same phenomena had opposing consequences as a result of the disparity of the normative structure as a whole.

Law of obligations

Damien CHENU

Infra-contractual normative densification

Most isolated signs of infra-contractual normative densification are well known but largely unknown as being part of a process. Yet, it cannot be denied that over time, the contractual clause has attracted increasing but dissipated attention. Considered individually, the process of infra-contractual normative densification feeds on these various signs. The same applies to theories in which certain clauses come under a different regime to that of the contract, notably during its execution or termination. Normative densification is then endogenous, since the clauses gain in force while remaining subject to the contract that bears them. On the other hand, the clauses can become independent, which will enable them to withstand the possible ineffectiveness of the contract. Densification is then exogenous, since such clauses should be considered as veritable agreements.

Véronique CHÉRITAT

Normative densification of the real estate deed of sale

Normative densification of the real estate deed of sale has two meanings. The first highlights the increased quantity of clauses inserted in the deed, it is quantitative densification. The second reveals the increased quality of the deed, and in this case it is qualitative densification. Taking place one after the other, these two occurrences reveal a genuine process of densification of the deed of sale, because if quantitative densification marks the faculty of the contract to adapt to the increasing complexification of our society, qualitative densification provides greater contractual protection that is essential to the permanence and finally to the normative force of the contract in question. Normative densification therefore, in the particular context of the real estate deed of sale, goes hand in hand with the notion of normative force, as these two phenomena have a causal relationship; but it is not normative force as in the traditional sense of a force of compulsion and obligation. While quantitative densification is a force of adaptation, qualitative densification, in turn, reveals a force to protect and ensure the continued existence of the real estate deed of sale.

Geneviève HELLERINGER

The growing empire of contractual clauses : an illustration normative densification ?

The evolution of the clauses of the contract reveals “squared” normative densification. On the one hand, the contractual clauses are more concentrated within the contract : resulting from contractual practice and its internationalisation, this quantitative mutation leads, by addition, to the strengthening of the role of the clauses in the expression of the contractual norms. On the other hand, positive law recognises a frequently heightened binding force of the various clauses, expressing renewed respect for freedom of contract that the infatuation for the clauses could however make fragile. The double normative densification could ultimately be the victim of its own force.

Stéphanie MAUCLAIR

The normative densification of a practice. The example of independent guarantees

Normative densification is a process of captation of the real by the law. At work in the field of independent guarantees, it appears through an extension of this practice, followed by its jurisprudential and legal recognition, accompanied by an appropriate judicial regime. But the example of independent guarantees also makes it possible to highlight the limits of the densification process. Because it is not only a question of accepting a practice in the legal order : It also tends to oversee it. This monitoring process results in a degree of rigidity which makes the practice in question lose its appeal. The independent guarantee has thus become less flexible, leading exponents to turn to other protection mechanisms. In this respect, a phenomenon of “de-densification” has replaced the process of densification.

Mustapha MEKKI

The normative densification of the contract

In contractual matters, whatever the contract has gained in normative density, it appears to have lost in normative intensity. This densification is reflected by an increase in the contractual content and a rise in the normative effects of the contract. However, this densification has led to a normative dilution of the contract which raises questions about its future.

Olivia SABARD

Vicarious liability Between normative densification and de-densification

Vicarious liability oscillates between normative densification and normative de-densification. On the one hand, the regime of vicarious liability, in becoming stricter, has got denser. On the other hand, the concept of vicarious liability, in becoming evanescent, has got less dense. This double movement, highlighted through the concepts of normative densification and de-densification, questions the meaning of the evolution of vicarious liability.

Cyril SINTEZ

Normative densification of liability for the actions of things

The study of the liability of things reveals a process of normative densification. It has emerged under the mutual influence of the doctrine, the judge and the legislator, all three being overdetermined by the social need of compensation for a new type of accident. The construction of liability for the action of things is thus guided by values and determined by the social context. Its progress, with identical stages occurring for work-related accidents and traffic accidents, provides the final proof of a process at work in which liability for the action of things becomes denser through an accumulation of legal and non-legal normativity which is inscribed in law through the use of exclusively formal channels : an article of the civil code reinterpreted and specifically tailored new laws. In order to achieve the result of a general principle of judicial responsibility and several special legal regimes, we find that the study of law being shaped by values influenced by things and science shakes the fundamentals of the normal science of law, which remain positivist.

Insurance law

Katja SONTAG

The administrative contract of insurance, an approach through normative densification.

It is proposed to observe a “micro-judicial” occurrence of normative densification (the normative densification of the administrative contract of insurance), which could illustrate a hypothesis of “densification through hybridisation” of an object, “transjudicial” by hypothesis. In this case, normative densification is divided temporally in two stages. The first, which consists of an accumulation of norms from private and public law from different rationalities, being the condition of the second, which results in semantic change of the category being analysed.

Business and company law

Nathalie DION

Normative densification of ethical charters (or the unveiling of their hidden side)

The process of normative densification of ethical charters is characterised by two successive stages. The first stage, that of their normative emergence, emphasises the awareness instilled by ethical charters but also their possible instrumentalisation. The second stage, that of the intensification of the normative force of ethical charters, shows their effect of compression (through constraint) and their toughening (by the implementation of sanctions). Linking the process of normative densification to ethical charters therefore leads to observing their occurrence from a fresh and critical perspective. Normative densification then acts as a revealing agent that makes it possible to understand, with refined awareness, the complexity of the changes of the law like those of time.

Géraldine GOFFAUX CALLEBAUT

Normative densification and de-densification in Japanese company law :

Company law is a branch of law affected by the phenomenon of normative densification, the densification being both quantitative and qualitative. But the subject is also affected by the opposite phenomenon of de-densification. These two movements combine with other movements which modify

the structure of the subject. The study of all these movements does not reveal any overall coherence. Therefore, to consider normative densification as a process, in the sense of a group of organised phenomena, seems difficult in this branch of law.

Véronique MARTINEAU-BOURGNINAUD

Normative densification and business ethics

Business ethics, a soft subject that makes recommendations more than it issues orders, lends itself readily to the observation of normative densification in both its qualitative and quantitative aspects. Driven by a normative force, business ethics aspires to become a law and disguises itself by cladding itself in codes. Its formalisation and judicialisation make it compatible with law. Zones of permeability then appear between the two subjects which will influence one another, with business ethics sometimes the subject of normative densification and sometimes a factor in the process.

Catherine VINCENT

The normative densifications of directive 88/361/EC of 24 June 1988

Observing the normative densifications of the European directive of 24 June 1988 on the free movement of capital is very instructive. It shows to what extent it may be a protean phenomenon. In this case, the densification relates to both the form and the content of a norm. Through its effects it may be described as statutory, formal, functional or material and through its causes as accessory or instrumentalist. Like soft law, it enables the law, as a dynamic entity, to adapt efficiently and quickly, constantly evolving by moving away from the classic terminology of legal rules.

Environmental law

Caroline BARDOUL

The normative densification of sustainable development

In the literal sense, densification implies “an increase in density”. As for normative densification, it underlies an increase in the density of the norm, i.e. making its definition more precise and strengthening its binding force. Sustainable development resulted from the international conference which took place in Rio in 1992. Originally, it was designed both as a principle and as a concept with variable content. Its definition was particularly vague and imprecise. At that stage it was only slightly prescriptive or indeed not at all. Since then, its definition has become more precise, more dense. However, it will never be possible to determine this definition in a definitive manner. Indeed, if that were the case, it would be tantamount to denying the very essence of sustainable development which must be adapted to the diversity of regions and economic activities. On the other hand, as a result of sustainable development now being more clearly defined, it has become more important, its normativity has strengthened greatly and this is proving positive. Nowadays, sustainable development is a standard both for the legislator and the judge. Sustainable development is now sufficiently dense for it to be prescriptive yet it has not become immovable. Sustainable development is thus a fine example of the “right balance” of normative densification.

Mathilde BOUTONNET

Normative densification of environmental law. From the normative phenomenon to a mode of legal regulation

Environmental law is a veritable test laboratory of normative densification. An increasing number of norms occupy the same normative space, arising from the evolution of the substance and the normative forms. The extension of the subject and the refinement of the purpose of environmental law prove to be inextricably linked to the diversification and transformation of the norms. As such, normative densification is more than just an observable phenomenon. It is a mode of legal regulation.

Aude-Solveig EPSTEIN

The normative densification of the right of access to environmental information

When viewed through the prism of the right of access to environmental information, normative densification appears as a multidimensional process of scaling the ladder of normativity (vertical normative densification) and extending its field of application (horizontal normative densification). While these two movements may strengthen one another, their interaction may also be avoided. The

force of the right established at the top of the pyramid of norms may be explicitly limited, so as to curb the horizontal ramifications. Conversely, the horizontal dissemination of the right may occur without the question of its force being settled. The contribution of normative densification then becomes clear. In order to contain the effects, it is necessary to go back to the substance and the functions of the accepted right. Methodologically, normative densification thus calls for a perspective that is more teleological than respectful of boundaries between branches of law. Therefore, normative densification makes it possible to show the unity of legal phenomena that are seemingly disparate and uncoordinated.

Adélie POMADE

Internormativity and normative densification : connection or separation ? Avenues for reflection in environmental law

Normative densification and internormativity are currently of particular importance in human and social sciences. If the meaning of the latter is fairly clear, the former deserves to be given our full attention. In view of their close relationship, it is possible to produce a definition of normative densification and to suggest that it highlights a proliferation of non-legal norms and the intensification of the dialogue between the actors involved in the creation of an environmental legal norm. Its close links with the phenomenon of internormativity enable it to be considered not as an anarchic situation but rather as organised.

INTERNET LAW

Lêmy DUONG GODEFROY

Normative densification and Internet

Normative densification in relation to Internet appears as a process aimed at the concentration of norms. This concentration is designed to extract the essence of the norms from the mass of norms. The concentration must be carried out both at the formal level by tightening the mesh of the network of sources and at the substantial level by focusing on framing principal norms. Normative densification can then be a factor in the development of normative force.

RISK LAW

Pierre-Yves CHARPENTIER

Normative densification of risk analysis

Risk analysis, which first appeared in the field of potentially dangerous activities, has expanded enormously. Its development, often linked to the occurrence of major disasters, has been accompanied by the enrichment of its content and its scope, a veritable process of qualitative densification that gives it the standing of a norm. The extension and gradual enlargement of its scope and its field of application, a process of quantitative densification, have enabled it to be present today in many areas of human activity and to become the indispensable norm in risk management.

HEALTH CARE LAW

Isabelle BEAUJEAN

Normative densification in patients' rights. A protean process

The search for normative densification leads to observing how law is constructed and to the conclusion that there seems to be not just one normative densification but several, in line with the very definition of the general concept of densification, depending on the means used during the development of the law. Accepting and going beyond the initial contradictions of the definition, it reveals the richness and inventiveness at work as the law develops and operates. Patients' rights, an area where there has been much activity recently, offers a very wide range of examples of normative densification as a process. The findings presented make it possible to attempt to draw up a definition.

RURAL LAW

Sylvie LEBRETON-DERRIEN

Reflections on the normative densification of rural law

The normative process launched in rural law, with a view to its modernisation, pertains to the intuitive idea of densification, i.e. a quantitative and qualitative increase of the norms. Thus, through the

example of normative production, both legislative and contractual, these reflections highlight phenomena of codification, complexification, perfection and interpenetration of the norms. If the normative densification of rural law proves to be a reality, reflection may begin as to its appreciation : whereas the densification of the legislative norm is subject to disapproval, that of the contractual norm may meet with approval. Therefore, normative densification could find meaning, appeal and justification in the intensification of the normative force of rural law and contribute to this law being better received.

MANAGEMENT SCIENCE

Nathalie DUBOST

Normative densification and legitimacy. The example of assessment in the social and medico-social sector

Starting with the premise that normative densification is founded on the ability to make a norm a reality both in time and space, with points of reference which are not uniform but rather homogeneous for all the actors involved in implementing the norm, we suggest using the concept of legitimacy as a factor to encourage this process. By using the typology of legitimacy proposed by Suchman, we show that the transition from regulatory legitimacy to moral and then cognitive legitimacy reflects the increasing densification of the norm. In order to illustrate this premise, we analyse the assessment of the practices of establishments and services in the social and medico-social sectors which were introduced in the law of 2 January 2002; it seems premature to talk of densification given the difficulties in reaching moral legitimacy, and moreover is cognitive.

MULTIDISCIPLINARITY

Labour law and management science

Dominique BESSIRE, Emmanuelle MAZUYER

Corporate social responsibility The paradoxes of normative densification

The term “normative densification” seems able to refer to two distinct meanings, but which are not necessarily exclusive : formal “on the surface” densification, of an essentially quantitative nature and densification “in substance” of a more qualitative nature. We show that the “on the surface” densification observed in the field of corporate social responsibility (CSR) tends to impede densification “in substance”. We try to resolve this paradox by showing, on the one hand, that it originates in the very definition of CSR (its voluntary nature or not) and, on the other hand, that it could herald new ways to regulate contemporary capitalism.