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Jean-Sylvestre Bergé

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## **The Grammar of A Priori in and around the Law**

by Jean-Sylvestre Bergé (Law Professor at Université Côte d'Azur (Nice, France) – CNRS GREDEG<sup>1</sup>)

**Abstract:** This article is one of a series devoted to the study of a priori in law. It is part of the ANTECEDENT research project supported by a Chair of the Initiative of Excellence Université Côte d'Azur sponsored by the French government. The aim of the project is to revisit the law through its preunderstandings, leave behind the law only better to return to it, propose an "antecedent" theory of law and apply theoretical reflection to major topical issues. It is based on the following general hypothesis: if a priori are everywhere, and if the law is capable of dealing with a priori, then the law is everywhere, and not just where we want to leave it. After studying the antecedent method and the vocabulary of a priori, we devote this third article to examining the grammar of a priori in and around the law.

**Keywords:** Legal knowledge, A priori, Multidisciplinary, Grammar, Legal Jurisprudence

**JEL Classification:** K10, K19

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<sup>1</sup> [Jean-Sylvestre.Berge@univ-cotedazur.fr](mailto:Jean-Sylvestre.Berge@univ-cotedazur.fr) – Professional profile : <https://univ-cotedazur.fr/annuaire/jean-sylvestre-berge>

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This article is part of the ANTECEDENT research project (2021-2026)<sup>1</sup> supported by a Chair of the Initiative of Excellence Université Côte d'Azur sponsored by the French government<sup>2</sup>.

By a priori, we mean the set of preunderstandings that exist prior to legal constructions, and which are generally little discussed. The approach we take is multidisciplinary: trying to leave the law behind in order to better return to it. It is epistemological: contributing to the understanding of legal knowledge through its a priori.

After studying the antecedent method<sup>3</sup> and the vocabulary of a priori<sup>4</sup>, we devote this third article to examining the grammar of a priori.

To what extent have a priori been theorized in law so far? What is their legal grammar? It is worth making an initial survey of the current situation in law (1) and outside of law (2) in order to lay the foundations for a comprehensive grammar of a priori in law (3).

### **1. The grammar of a priori in the law**

Legal approaches have been built around a priori (1.1), which bodes well for the development of new approaches (1.2).

#### **1.1 Legal approaches based on a priori**

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<sup>1</sup> For an overview of the project hosted by Université Côte d'Azur (Nice-Sophia Antipolis, France), see: <https://docs.google.com/document/d/1kmDjBprx1y-Ocv3pnAExFYUqkRZifXZW/edit>

<sup>2</sup> This program is supported by the French government through the France 2030 investment plan managed by the National Research Agency (ANR) with the reference number ANR-15-IDEX-01. The English version of this article was supported by the IdEx program's international visibility unit.

<sup>3</sup> Bergé (2022).

<sup>4</sup> Bergé (2024).

We can distinguish two main types of references to a priori: those that directly name a priori and those that refer to them indirectly, which we will summarize to draw an intermediate conclusion.

To our knowledge, only two works have been entirely devoted to a theoretical approach to a priori in law.

Let's start with the first.

In 1913, Adolf Reinach published a substantial essay in German entitled *Die apriorischen Grundlagen des bürgerlichen Rechts* which has been translated into English (The Apriori Foundations of the Civil Law)<sup>1</sup>. The author, who died in 1917, was a student of the famous phenomenologist Husserl and developed an original phenomenology shortly before the First World War, specifically devoted to the realities underlying civil law. In this work, A. Reinach defends an ontological view of a priori. His theoretical and abstract work redefines the essence of structures of civil law through four a priori: ownership, promise, claim and obligation. They are a priori in the sense that these four structures do not depend directly on statements of positive law. They are not created by the law, but pre-exist it. In the simplest terms, we can say that, according to A. Reinach, it is because people have the ability to possess, promise, claim and obligate that (civil) laws on these subjects exist, and not the other way around! Ultimately, what A. Reinach seeks to do in the field of civil law is to define a model of inherent objective facts or phenomena – the four a priori objects of law – that characterize the a posteriori intervention of positive law. Even though this work may not be very accessible, and one is not obliged to follow all the author's arguments, it has the great merit of establishing a theoretical relationship between a priori and the law. This pioneering advance is relevant to more than just civil law. If the author had not died prematurely during the First World War, he would certainly have continued his work, as he had planned, well beyond this field of law.

A second work was carried out by Jean-Louis Gardies as part of an essay written in French on the a priori foundations of moral and legal rationality<sup>2</sup>. The author, who is equally knowledgeable in mathematics, logic and philosophy, is not strictly speaking a jurist. But the considerations that motivate him, particularly in this work, not only borrow from the thoughts of A. Reinach, to whom he often refers, but also intersect with many questions important to jurists. His work therefore deserves to be mentioned among the theoretical approaches based on the a priori of law. In this work, the author develops three major themes. The first is intended to be introductory, dealing with the foundation of what a being ought to do, the possibility of expressing the modalities of obligation (deontics) through logical reasoning, and the distinction between morality and law. The second applies deontic logic in the strict sense to the legal field. The third is phenomenological, proposing an ontology of law that extends and refines that of A. Reinach. There is one central point of particular interest to us in our work on a priori: the modal approach, which can be defined simply as a reflection on the a priori modalities of law. Modal logic is formal logic in the mathematical sense that is concerned with verifying the correctness of a proposition by varying its modalities. Thus, we can distinguish the hypothesis

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<sup>1</sup> Reinach (1913).

<sup>2</sup> Gardies (1972).

in which a proposition is considered necessary from that in which it is judged merely possible. Modal logic is used here as an instrument of deontic logic, basing normative statements on four major modalities: the forbidden, the necessary, the impossible and the obligatory. This type of approach is difficult to follow for a jurist who is not used to dealing with axioms. The task is made even more difficult by the fact that there is a wide variety of modal logics, depending on the nature of the modality under consideration. But J.-L. Gardies offers an analysis that we feel is perfectly suited to our research: a priori modalities can account for the possibility of a legal statement.

Many theoretical analyses of law refer indirectly, but pivotally, to a priori. To do this, they use particular vocabulary or periphrases. We have selected a small sample of three works, in the form of monographs.

Let's start with the first. Santi Romano is the author of the acclaimed *L'ordinamento giuridico*, which has been translated into English (The Legal Order)<sup>1</sup>. This work is part of a dual theoretical perspective, institutionalist and pluralist. At the heart of his argument, the author intends to demonstrate that all social organization pre-exists the creation of a legal system. His aim is none other than to bring into the law the fact of social order, which is generally held to be "antecedent" (the author uses the expression *antecedente* several times) to law. This can, of course, refer to the social order of the state. But the author, rejecting all forms of legal exclusivism, is open to other types of social organization: the international community, the church, the company, the family, the mafia, etc. What is remarkable here is the author's ability to think through the connections between what pre-exists the law and the subsequent constructions of law. A priori exist in the multiple forms of more or less formalized social institutions, which has the decisive consequence of producing equally multiple forms of legal orders. Even if this work has made its mark mainly in its institutionalist (especially in Italy) and pluralist (mostly in France) aspects, the author deserves credit for the rare effort he has made to conceptualize a clear pathway connecting the before and after of the law.

The second work deals with the hypothetical basic norm. Austrian legal theorist Hans Kelsen, father of the famous "Pure Theory of Law"<sup>2</sup>, postulated the existence of the basic norm as a logic-transcending hypothesis. Underlying this concept, borrowed by "analogy" from the Kantian theory of knowledge, is the idea that it is necessary to posit the notion of a fundamental hypothetical norm (*Gundnorm*), the essence of which is assumed but not discussed, if we wish to claim that the constitution and all the laws made on the basis of it have an objective meaning and should be considered valid. The a priori here (although this expression is not used to our knowledge) takes the form of a hypothetical postulate that consolidates the normative structure which, to put it simply, is based on the validation of each norm by reference to another norm. In a system of positive law, if you take the highest standard – the constitutional standard – you have to refer to another standard to validate it. This is where the fundamental, transcendental a priori imagined by the author comes into play. In addition to the allusion to the Kantian a priori, which could be debated, another remark by the author is worth noting: he explains, quite rightly,

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<sup>1</sup> Romano (1918-1945).

<sup>2</sup> Kelsen (1934-1960).

that the concept of the fundamental hypothetical norm is useful because it enables us to become fully aware of what all jurists are doing, more often than not without realizing it, when they conceive of law exclusively as positive law. We will come back again to this idea that a priori can be a powerful driver for raising awareness of legal constructs.

We now consider the third work. Jean-Marie Denquin has recently published a comprehensive work on legal concepts.<sup>1</sup> It is a wide-ranging reflection on the law, considered in its own right, as a complex entity. Without seeking here to describe the whole of this work, which is difficult to summarize in a few sentences, it is interesting to note for our analysis of a priori that the author devotes considerable attention to legal reasoning based on the "antecedent – consequent" pair. We find here a form of a priori (more common in English than in French) – the antecedent – that occurs in relation to a consequence – the consequent – which itself may occupy an antecedent place in relation to another consequent that follows in the line of reasoning. The antecedent – consequent pairing is at the heart of this work. According to the author, the legal construct is neither a notion, nor an essence, nor the expression of what should be done. Rather, legal constructs are relations, and more precisely relations between an antecedent and a consequent. Whatever their impact on realities outside language, they can only take the form of propositions expressed in natural language and adopting this structure. In other words, the antecedent contains a normative proposition which, if the conditions are met, is realized in the consequent. This is a rather minimal definition of the notion of a legal construct, based on an essential structure of reasoning in law, between what comes before – a priori we might say – and what comes after – a posteriori.

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At this stage of our analysis, we have to address the fact that there is no general theory of a priori established in law.

With no insult intended to the authors, we observe that the two theories directly developed on the theme of the a priori foundations of law (A. Reinach and J.-L. Gardies) have not been widely popular with jurists. Note, for example, that their work does not feature in most general works devoted to legal theory or methods, or even to the philosophy of law.

As for the other works mentioned above, which make indirect reference to a priori, it can be said that they are never presented as constituting a theoretical approach to a priori in law. They have literally been swallowed up by other theoretical approaches, either institutionalism and pluralism (S. Romano), positivism and normativism (H. Kelsen) or a form of phenomenology (J.-M. Denquin).

That we have reached this current state of affairs can be explained by specific reference to each of the doctrines involved (the interrupted work of the young A. Reinach, the essentially

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<sup>1</sup> Denquin (2021).

philosophical-logical nature of the work of J.-L. Gardies and, as mentioned above, the merely indirect references to a priori in the works of S. Romano, H. Kelsen and J.-M. Denquin).

But there is undoubtedly more to be said about this absence of a general theory of a priori in law, which merits a broader and deeper explanation of the characteristics and implications of such a theory.

## 1.2 The development of new approaches to law through the prism of a priori

The law lends itself to new interpretations through its a priori, beyond the few scholarly works we mentioned in the previous section. We will take a closer look at some recent initiatives that should enable us to conclude, as an intermediate summary, that the concept of a priori in law is both appealing and adaptable.

Three types of recent or relatively recent research experiments<sup>1</sup> have led us to take part in an individual and collective reflection on the place that a priori might occupy in law in a number of areas. The first involves research into a priori comprehensions of situations of movement as understood by positive law. The second relates to the possibility of debating our a priori on the basis of other subjects. The third is an analysis of legal theory.

Let's start with the first.

In a previous study of situations of movement and the law, we tried to draw up a typology of the a priori (sometimes also called antecedents) likely to shape certain constructions of law.<sup>2</sup> This research led us to cross-reference many different discourses on movement. Some are specific to jurists. Others come from other areas of knowledge. In all cases, these discourses revealed several a priori understandings of phenomena involving movement, and the hypothesis we investigated concerned the extent to which these preunderstandings exerted a potentially decisive influence on the construction of law. The research was intended to be pragmatic in the sense that it sought to understand the a priori through the effects they have on positive law. What counts here is to identify the key a priori that are likely to guide subsequent constructions of the law. This work has thus led us to distinguish 6 major types of a priori: 1) the magical a priori (metaphors of movement flows in law, e.g., the reference to the needs of international trade to justify legal exceptions); 2) the liberal a priori (movement as a political, philosophical and economic vision for the law, generally found in the the law of free trade); 3) the social a priori (the realities of movement in society in the law, e.g., ship and flight crews and their specific categorization in law); 4) the ontological a priori (movement as the essence of the object of law, as in the case of people, data, capital and waste); 5) the fundamental a priori (movement as the foundation of a legal system, e.g., the legal system of the European Union and its different movement zones); and 6) the modal a priori (the different modes of movement that shape law, with a threefold subdivision distinguishing between a) the mode of movement

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<sup>1</sup> These experiments were conducted as part of two research programs: the IUF senior project IFITIS 2016-2021 on movement and the law ([https://docs.google.com/document/d/1--OsxctgEzQB3pX40i\\_eiemR\\_ycAVIZ/edit](https://docs.google.com/document/d/1--OsxctgEzQB3pX40i_eiemR_ycAVIZ/edit)) and the aforementioned IdEx UniCA project ANTECEDENT 2021-2026.

<sup>2</sup> This research has been published in an essay, see in particular: in French, Bergé (2021a) and in English, Bergé (2021b).

itself, b) the transformative aspect of movement and c) movement as a space of flow). Drawing on national, international, European and transnational positive law, past, present or in the making, we have observed that these six elements play a very important role in understanding the constructions of law, particularly in the versatile way they approach situations involving movement. This work is clearly distinct from the analyses of A. Reinach and J.-L. Gardies, mentioned in the previous section. Unlike the first author, our aim has not been to identify ontologies of law that exist independently of any reference to positive law. And unlike the second, we have not sought to develop a logical rationale for the modalities of apprehending the subject "situation of movement". But it may be said that this work was inspired by these a priori theoretical approaches, which hypothesized that law can be understood through its a priori.

Let's continue the analysis with research that looks at debating our a priori concerning other types of object. As part of the ANTECEDENT research program (above-mentioned), we and other researchers have tried to spark an open discussion about a priori on different subjects of interest to the law. In most cases, the approach was multidisciplinary. But if for the moment we confine ourselves to the sphere of law (see references to other disciplines in the following section), here are a few examples of subjects where a priori have an influence.

A first initiative took the form of an internal seminar at a research laboratory on the theme: "Debating our a priori!"<sup>1</sup> The aim of this seminar was to reflect on the simple, undeveloped, primitive, more or less naive, and more or less targeted a priori that we hold about certain objects. The following topics were selected for the seminar, aligned with the laboratory's research themes: business, work, innovation, artificial intelligence and planetary limits. The analysis of these a priori concerned in particular the attitudes with which we approach these issues in law. Therefore the focus was on the time and space that comes before legal intervention. The analysis could be conducted individually (my a priori or someone else's) or collectively (our a priori or theirs), and considered yesterday, today or tomorrow (several sessions sought to bring together these different perspectives, in particular the session on artificial intelligence and planetary limits). These interactions produced unexpected results. While most jurists are "a priori" not interested in a priori, since they consider them to be prior to legal intervention and therefore foreign to the law, the simple fact of drawing attention to the possible presence of a priori feeds a wide variety of analyses on very diverse subjects, which are either being developed or are already well established in law.

A second initiative took the form of a young researchers' study day organized in Nice in 2022 between several laboratories within our university on the theme: "Examining our research topics through our a priori".<sup>2</sup> Jurists reviewed a range of research topics: human rights

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<sup>1</sup> UMR CNRS GREDEG multi-year seminar 2020-2024, videos available at: <https://gredeg.univ-cotedazur.fr/manifestations-scientifiques/seminaire-pluriannuel-1>

<sup>2</sup> Bergé, Kassoul (2023).



education<sup>1</sup>, language<sup>2</sup>, artificial intelligence<sup>3</sup> and uncertainty<sup>4</sup>. Most often approached in the context of doctoral research, these topics lent themselves to analyses with a strong, usually reflexive, theoretical dimension, in which young researchers questioned their a priori understanding of their topic of study.

Lastly, we note a third series of initiatives that are more personal to us in the context of the ANTECEDENT research program. This has led us to work on: emotions, social acceptability in the context of citizens' assemblies, constraints, access to the law, the choice of judge in a global context, the contractualization of the law, ignorance, methods, not forgetting the many aspects of the theme of movement that we have already referred to.<sup>5</sup>

And finally, what about research into legal theory? In addition to the above-mentioned works, several of which have a strong theoretical dimension, the ANTECEDENT research program (above-mentioned) also provided the opportunity to organize a seminar in 2022 in Sophia Antipolis, bringing together a number of legal theorists (and researchers from other disciplines whom we will meet again in the next section). The proceedings of this seminar have been published in English.<sup>6</sup> Putting to one side our analysis of the possibility of developing a new antecedent method in law,<sup>7</sup> five theoretical contributions are worthy of note.

The first contribution deals with "The Cultural Dimension of Law".<sup>8</sup> The author considers that reflecting on prejudices in law is difficult because all in law is prejudice. This is due to the ubiquitous place of culture in law. Another obstacle is that, although uncovering common sense and prejudices makes particular sense in science, in the field of law, science is challenged, and it exists only in certain legal systems, so it could in itself be considered a prejudice!

The second contribution relates to the following question: "Is Legal Knowledge a Knowledge of Object?"<sup>9</sup> According to the author, dogmatic discourse is not strictly speaking a scientific discourse, since it is essentially articulated by means of ideological notions, which are vehicles for the political ideas contained in the applicable norms. This does not mean that dogmatic discourse cannot be rigorous, but it does entail an effort to distance oneself from the propositions under study and the a priori conditions of those propositions. This effort of conceptualization requires a clear distinction between citation, description and explanation, and then there are two key points to be settled: firstly, the academic discourse of legal science does not create law - only "jurislators" create law, whether it is the constituent legislator who amends the constitution, or the individual who incurs a restitutionary obligation by taking out a bank

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<sup>1</sup> Dufourt (2023).

<sup>2</sup> Mavourli (2023).

<sup>3</sup> Billion (2023).

<sup>4</sup> Russo (2023).

<sup>5</sup> For a complete list of research activities carried out on this a priori theme: <https://docs.google.com/document/d/1kmDjBprx1y-Ocv3pnAExFYUqkRZifXZW/edit>

<sup>6</sup> Bergé (Ed.) (2023).

<sup>7</sup> On this "antecedent method", see Bergé (2022).

<sup>8</sup> Zenati-Castaing (2023).

<sup>9</sup> Boudot (2023).

loan; and secondly, the discourse of legal science is a descriptive work, the purpose of which is to analyze and determine, in terms of existence, validity or conformity, whether a statement can be described as a norm. Ultimately, saying whether a proposition is legally valid or whether it exists is an act of scientific knowledge, whereas saying whether a proposition is legally good, just or useful is a political prescription.

The third contribution is entitled “Antecedent and Ontology: in Search of the Smallest Possible A Priori”.<sup>1</sup> The author's aim is to reflect on the possibility of a minimal ontology of law, in other words, the possibility of defining the lowest common denominator between all possible ontologies of law. The author's main idea is to reject the conscious or unconscious adherence to a prior theory of law. To this end, he proposes to analyze the law from the perspective of its practice. It thus appears as a discourse consisting of a set of statements structured by concepts. Without these minimum elements, the practice of law is inconceivable. The challenge for jurists is to avoid getting lost in complex and interminable philosophical debates, and to theorize the day-to-day practice of law.

The fourth contribution focuses on “The Private/Public Divide among the Principles of World-building”.<sup>2</sup> Although strongly anthropologically and philosophically inspired, it is aimed at jurists. According to the author, a jurist himself, students of law can benefit greatly from consulting scholarly works on status, corporateness, publicness, inalienability, giving, exchange, sovereignty, and many other concepts that are essential to understanding law in contemporary societies. Particular attention is given to analyses of the cultural rather than natural dimension of the public/private divide in family relationships. The cultural variables of the family/society divide are, in fact, essential in defining, by law, the obligations on which human societies are built (obligations of descent, sexual interactions and prohibitions, particularly incest).

The last contribution (H. Kassoul) offers an analysis of “The A priori: a Structure of an Ascendant Imaginary”.<sup>3</sup> The aim of this work is to rediscover the a priori as a structural element that has an ascendancy over the law and jurists. Instead of emphasizing the classical temporal dimension of the a priori, which is due to its “prior” character, the author proposes to emphasize its vertical dimension, namely, the hold it has on our perception of reality. A priori is thus presented as the structure of an ascendant, that is, dominant, imaginary. It is this ascendancy that generates an inheritance of primary images, in other words it forms the genealogical links that maintain in history and space the images which structure our perception of the world and thus guide the norms in a certain direction. While the imaginary is often presented as a force for the renewal of institutions, the author wants to emphasize, on the contrary, that primary images sediment prefigurative narratives that enclose our definition of things and hinder their redefinition. The a priori image allows the imaginary to dominate over reality, which, in addition to its explanatory potential, has its own prescriptive effect.

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<sup>1</sup> Rouvière (2023).

<sup>2</sup> Barshack (2023).

<sup>3</sup> Kassoul (2023).

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At this stage of our analysis, it is fair to say that the concept of a priori is remarkably appealing and adaptable in law.

In our own experience, whenever the notion of a priori is brought into play, it resonates with jurists. The subject engages us. It raises profound questions about the way we approach the law.

There is an obvious reason for this. Any approach to or about the law necessarily encounters a priori at one point or another, especially if we accept a broad definition of a priori, as is the case in this work.

In these encounters, we can find all kinds of ideas, both positive and negative, on the acceptance of a priori by the law.

But the fact is, a priori always offer food for thought. Whatever the type of analysis undertaken, whether practical or theoretical, retrospective or prospective, a priori offer an appeal and an adaptability, which surprises us all the more as they are not given any real attention in doctrine – except when we provoke discussion on the subject! More on this later...

What about outside the law?

## **2. The grammar of a priori outside of law**

It's always a delicate operation to step outside one's own discipline to make inroads into other areas of knowledge, unless of course one has mastered them all, which is not the case here. It is nevertheless necessary to make this effort on the subject of a priori. While particularly philosophical in nature (2.1), discussions of a priori can also be developed in other disciplines (2.2). We will conclude these considerations with an intermediate summary.

### **2.1 A priori: an eminently philosophical question**

How have a priori been theorized in the philosophy of science?<sup>1</sup>

Unquestionably, philosophy is the first place to turn when trying to approach the notion of a priori in its theoretical dimension. The most significant work on the subject has been done in that discipline.

A priori is an ambivalent concept in the philosophy. It has two main meanings: the transcendental sense, which is the one most often put forward, and the everyday meaning of "prejudice", which occupies a somewhat secondary place. Both senses of a priori deserve to be

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<sup>1</sup> The developments in the following two sections are the result of preparatory research work carried out in collaboration with Ms. Anne-Laure Thessard, who trained in the philosophy of science and in 2022 held the position of project engineer with the IdEx UniCA ANTECEDENT project (above-mentioned).

studied jointly, in order to reveal their respective meanings, but also to remove confusion about their uses.

In the first sense, a priori has a transcendental Kantian dimension.<sup>1</sup> A priori designates a category of knowledge considered independent of experience. As such, an a priori is a transcendental justification of knowledge. If knowledge can be justified without experience, then knowledge is incorruptible, because it does not depend on our perceptions.

In its more usual meaning, the notion of a priori refers to prejudices, and particularly to paradigms, beliefs, commonplaces, biases, and emotions. These prejudices are the result of individual or collective perceptions and interpretations.<sup>2</sup> They belong to cognitive, political, sociological or historical fields.<sup>3,4,5</sup>

These different understandings of a priori have been the subject of many studies spanning the theory of knowledge, the philosophy of science and epistemology.<sup>6</sup>

The theory of knowledge was developed at the end of the Renaissance in the seventeenth century. Philosophers sought to deepen old doctrines of human knowledge by focusing on their limits.

The philosophy of science emerged in the nineteenth century. It combined philosophy and science to respond to the need to meet the scientific and societal challenges arising from new discoveries.

Epistemology appeared in the twentieth century. It is generally defined as the study of science. It takes a critical stance on the conditions of knowledge and seeks to find new perspectives in knowledge theory.

What influence did these theories have?

Even if the term "a priori" is not always used as such, questions about a priori in the transcendental sense or in the usual sense remain prevalent in the contemporary intellectual environment, as we have highlighted above.

We can say that the theory of knowledge continues to evolve, whether in metaphysics or in more practical matters,<sup>7</sup> such as ethics.

Reflections on a priori have opened up to other disciplines, such as cognitive sciences.<sup>8</sup> These disciplines study the mechanisms of human thought and cognitive biases, in both human and animal neurobiological functioning, as well as in artificial intelligence.

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<sup>1</sup> Kant (1787).

<sup>2</sup> Gadamer (1960), Heidegger (1927), Ricœur (1994).

<sup>3</sup> Foucault (1966), Kuhn (1962).

<sup>4</sup> Kuhn (1962).

<sup>5</sup> Fiedler, Krueger (2011).

<sup>6</sup> Gödel (1931), Quine (1963).

<sup>7</sup> Gabriele, Robert (2015).

<sup>8</sup> Fiedler, Krueger (2011).

These historical legacies and contemporary investigations of the theory of knowledge, philosophy of science and epistemology are intertwined, but it is possible to identify some trends.

The ambition of the theory of knowledge, to "know knowledge", continues through the cognitive sciences (neurobiology, cognitive theories, fuzzy logic, etc.<sup>1</sup>) and their manifestations in the so-called "knowledge economy" or "cognitive capitalism".

There is a close relationship between the knowledge economy and philosophy, especially theories of knowledge. The humanist project of the "Lumieres" and the joint development of reason and human and scientific progress, leads in its technical expression to the development of computer science<sup>2</sup>, making computer science a new form of knowledge and above all a new form of power, specifically an economic power.

Ethical questions<sup>3</sup> naturally arise from this relationship between knowledge and cognitive capitalism, in that it urges us to observe closely not only how knowledge can be founded and used wisely, but also how we can think wisely in everyday life. In this sense, cognitive capitalism, which is in fact the "economy of artificial intelligence", turns knowledge into power and therefore, in this case, gives it a market value. The knowledge generated by artificial intelligence tools raises its own parallel questions in terms of the ethics of knowledge.

The theme of a priori thus takes different routes in the contemporary landscape, leading to very concrete questions about everyday life that have social and political consequences, and consequences in terms of the use and basis of knowledge. The premises and consequences of this use require an interdisciplinary approach, capable of fueling reflections on objects of thought and realities that have become complex.<sup>4</sup>

What is the latest progress on this topic?

The theme of a priori remains the subject of a continuous and abundant philosophical literature, which cannot solely be attributed to the fame of Kant, though his name is closely connected to a priori, both defending and criticizing it, as a possible, necessary and sufficient justification of knowledge. You could call a priori a real obsession!

To illustrate this point, we can start with the latest update, in 2020, of the entry on "A Priori" in the Stanford Encyclopedia of Philosophy,<sup>5</sup> which provides a rich overview of the many doctrines on a priori. In the period from 2020 to 2022, immediately following the publication of this encyclopedia entry, no fewer than five books have been largely devoted to this theme, either in English or in French.

Without going into the details of these publications, which would go beyond the "state of play" scope of this article, here is how these works are presented by their authors and publishers:

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<sup>1</sup> McCarthy, Hayes (1969), Minsky (1986).

<sup>2</sup> Wiener (1948).

<sup>3</sup> Aristotle.

<sup>4</sup> Morin (2008).

<sup>5</sup> Russell (2020).

- *Debating the A Priori*:<sup>1</sup> What kind of knowledge can be obtained simply by thinking? Two philosophers, Boghossian and Williamson, develop radically opposed points of view and present detailed responses to each other's arguments. The central case is the nature of basic logical knowledge and the justification of basic deductive inferences, but the arguments also broadly cover epistemology, philosophy of language and metaphilosophy. The debate focuses on the status of the distinctions between analytic and synthetic and between a priori and a posteriori, as well as on problems concerning the conditions for linguistic understanding and competence, and on the question of what it might mean to grasp a concept or have an intuition. Both authors explore the implications for how philosophy itself works, or should work. The result vividly exposes some of the main fault lines in contemporary philosophy, concerning the relationship between reason and experience, the status of basic beliefs, the nature of concepts and intuitions, the role of language in our understanding of the world, and the way we study knowledge and do philosophy.

- *C. I. Lewis – The A Priori and the Given*:<sup>2</sup> this edited collection explores the philosophy of C. I. Lewis through two major concepts that are integral to his conceptual pragmatism: the a priori and the given. The relationship between these two elements of knowledge forms the core of Lewis's masterpiece, *Mind and the World Order*. While Lewis's conceptual pragmatism opposes any conception of the a priori as constraining the mind and experience, it also emphasizes the inalterability and inevitability of the given, which remains the same however the mind interprets it.

- *Husserl and the A Priori – Phenomenology and Rationality*:<sup>3</sup> this book presents a systematic discussion of the development of Husserl's concept of a priori from his earliest writings to his later ones. The chapters analyze the various phases and aspects of Husserl's phenomenology of a priori in the light of his dual notion of reason, interpreted as both ontological and transcendental. Starting from an assessment of the introduction of the notion of a priori knowledge in the context of logic research, the book explores the development of this notion during the 1900s. It was at this time, in his work on *La crise des sciences européennes* (the crisis in the European sciences), that Husserl came to consider a priori as a criterion for interpreting the history of philosophy, particularly modern philosophy. This book sheds light on concepts such as essence and eidos, ideation, eidetic attitude and eidetic reduction, as well as formal and material a priori, and innate and contingent a priori. The author argues that for Husserl the a priori becomes the expression of an ontological form of rationality, that is, rationality immanent to being.

- *A Historical and Systematic Perspective on A Priori Knowledge and Justification*:<sup>4</sup> this book provides a state of the art of the problem of a priori knowledge, both from a historical and a systematic perspective. The author explores Kant's views in relation to the possibility of revision, which according to the author is rarely done, if at all, in philosophical literature.

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<sup>1</sup> Boghossian, Williamson (2020).

<sup>2</sup> Kammer, Narboux, Wagner (2021).

<sup>3</sup> De Santis (2021).

<sup>4</sup> Fred-Rivera (2022).

Furthermore, the views of philosophers such as Quine, Putnam, Kitcher and Hale are discussed in detail. Finally, this book attaches great importance to key notions about a priori knowledge and explains the relationship between a priori knowledge, fallibility and revision.

- A priori et temporalité – Sur les deux présupposés d’Être et Temps (*A priori and temporality – On the two presuppositions of Being and Time*):<sup>1</sup> In 1927, the work *Sein und Zeit* (*Being and Time*) exploded like a thunderclap. In it, Heidegger demolishes the two foundations of all Western thought: subjectivity, with the associated a priori (inherited from Kant) and intentionality (from Husserl); and temporality, with the dual primacy of succession and the present. Throughout the twentieth century, under the domination of this work that claimed to have the argumentative rigor of a treatise, phenomenology never again managed to reconnect with its transcendental vocation, instead appearing in hermeneutic, existential, ontological, cosmological and naturalist versions, inspired by the broad themes provided by the source text. A century later, this book by B. Barsotti proposes to refocus attention on the logical fabric of *Being and Time* with a view to rekindling phenomenology's lost transcendental dimension.

There are many other illustrations of the vitality of the theme of a priori in philosophy. If we return to the various aspects taken by the ANTECEDENT project (above-mentioned), we can point to two original philosophical approaches.

In the collective work, *The A Priori Method in the Social Sciences – a Multidisciplinary Approach*,<sup>2</sup> the contribution “Are Numbers A Priori Like any Other?”<sup>3</sup> asks the question whether numbers are a priori, or a posteriori. This question is part of an unresolved philosophical debate that questions the place of mathematics in the field of both theoretical and empirical knowledge. Is the a posteriori synthesis of the multiple the basis of the judgment, or is numeration founded on an a priori logic? In other words, do numbers exist prior to the numeration of things, or do they result from it? The author returns to Kant's transcendentalist perspective, Mill's psychologism, Frege's logicism and Husserl's phenomenological stance to explore this enigma. After a commentary on the philosophical works, he offers a reflection on the a priori application of probabilities to judgments in the field of justice. In particular, he questions whether an a priori numerical framework determines the legal decision or whether it is the a posteriori result of legal judgments.

In the 2023 special issue of the journal *Lexsociété*, devoted to the theme of examining our research objects through our a priori (op. cit),<sup>4</sup> we find a philosophical contribution on the theme of the relationship with the other.<sup>5</sup>

## 2.2. The use of a priori approaches in other disciplines

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<sup>1</sup> Barsotti (2022).

<sup>2</sup> Bergé (2023).

<sup>3</sup> Corteel (2023).

<sup>4</sup> Bergé, Kassoul (2023).

<sup>5</sup> Randazzo (2023).

Are there any recent research initiatives using a priori approaches outside philosophy?

It is not possible in a state of play to give a more or less accurate description, even if only a general picture, of the research initiatives outside philosophy that use a priori approaches.

We will simply give a few recent illustrations drawn from three research initiatives carried out as part of the ANTECEDENT project (above-mentioned), which we have mentioned several times.

A first initiative was an internal research laboratory seminar on the theme: "Debating our a priori!" (Multi-year seminar 2020-2024 of UMR CNRS GREDEG<sup>1</sup>). We recall that the aim of this seminar was to reflect on the simple, undeveloped, primitive, more or less naive, and more or less targeted a priori that we hold about certain objects. The following topics were selected for the seminar, aligned with the laboratory's research themes: business, work, innovation, artificial intelligence and planetary limits. For each of these themes, the discussion was led not only by jurists, but also by economists, management specialists and sociologists from the laboratory. Each of us took our own approach to a priori, so as to question our own discipline and bring it into dialogue with others.

A second research initiative involved the publication of the proceedings of the young researchers' study day on the theme: Examining our research topics through our a priori.<sup>2</sup> Leaving aside the writings on law and philosophy, which we have already mentioned, we present two contributions, one on literature,<sup>3</sup> the other on political science.<sup>4</sup>

The third initiative is the edited collection: *The A Priori Method in the Social Sciences – a Multidisciplinary Approach*,<sup>5</sup> which we have also cited several times. In this work, we find investigations into the place of a priori in economics, management, anthropology and sociology, thus completing the picture we have already drawn in law and philosophy. Thus:

- J.-L. Gaffard offers an analysis entitled "Antecedents in Labor Economics". He explains that there is a fundamental conflict between a theory of equilibrium and a theory of evolution in dealing with the question of labor and employment. One claims that an optimal state of the economy and society, to which job fluidity and wage flexibility are coupled, exists and is known in advance. The other maintains that the search for job stability and wage viscosity only make sense in the light of the expected consequences in terms of the viability of an evolution whose contours it is not possible to know a priori. This opposition in fact reveals distinct philosophies of knowledge, one referring to a pre-existing reality, the other to experience without a priori.

- M. Cimiterra and J. Krafft worked as economists on "Blockchain: Antecedents and Future Challenges". The contribution examines some of the heuristics that seem to persist in the collective consciousness, in particular those commonly associated with blockchain, as a

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<sup>1</sup> For the program and videos of each of these sessions, see: <https://gredeg.univ-cotedazur.fr/manifestations-scientifiques/seminaire-pluriannuel-1>

<sup>2</sup> Bergé, Kassoul (2023).

<sup>3</sup> Kossi Adzalo (2023).

<sup>4</sup> Parriaux (2023).

<sup>5</sup> Bergé (2023).



cryptocurrency, as a potential source of energy/environmental imbalances and as a cybersecurity tool. The authors point out that these heuristics do not fully capture the complex implications of blockchain, and that the technology should be viewed as having a much broader spectrum of implications for economic activity and society. While the disruption of financial institutions by cryptocurrencies and the decentralization of transactions remain prominent in the minds of many observers and commentators, the potential of blockchain technology goes far beyond these features, along with consequences that may be counter-intuitive at first glance. According to the authors, it is therefore important to explore the limits and challenges of blockchain technology, in order to better understand its potential impact.

- C. Ayerbe focused on the theme: “A priori to Investigate Innovation in Management Science”. The author explains that innovation management is an inherently interdisciplinary field. It also addresses specific research interests. To what extent have the commonplaces inherited from innovation in the social sciences influenced the construction of beliefs among innovation management researchers? How do they shape current leading approaches to innovation management? Her aim was to answer these questions by assuming that antecedents mold, forge and shape the very identity of the object of study. To follow this antecedent reasoning, the author begins by outlining the historical and theoretical foundations of innovation management. She completes her analysis by studying the specific features of the managerial approach to innovation in its strategic and organizational dimensions.

- A. L. Pastore Schritzmeyer presents a contribution entitled: “Not Having an A Priori has Become the Anthropological A Priori: Multiple Forms of Knowledge are Produced in Ethnographic Experiments”. The author reflects on ethnographic fieldwork, which has enjoyed the position of dominant a priori in anthropological thought for over a century. It implies there is no other a priori possible, because any scientific analysis has to start from the field. This has even become a radical viewpoint in recent years. The author investigates this view. Insofar as ethnographic experiences are considered, simultaneously, theory and method, they make it possible to incorporate the knowledge of several a priori, and not just one, into anthropological knowledge. Thus, like any type of knowledge, anthropology was and remains made in accordance with the conditions of existence (first type of a priori) and the possibilities of the discursive thought (second type of a priori) of its time.

- Gérald Gaglio is the author of the last study, entitled “The Investigation as an Antecedent in Sociology and other A Priori”. The author presents and discusses a research antecedent in sociology linked to the unavoidable necessity of conducting "social investigations" to promote the scientificity of the discipline. It shows that, while this a priori has been criticized, it has nevertheless become established. The article then reviews how sociologists deal with the a priori (in the usual sense of the term) of the actors they study, as well as their own, as part of the knowledge production process. The positions adopted with regard to these a priori differ greatly. They can be dismissed as obstacles to be overcome or burdens to be shed, or they can be welcomed as useful reference points and facilitators for analysis.

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The presence, as we have just observed, of numerous disciplines touching on the theme of a priori, raises the issue of crossing disciplinary boundaries.

The importance given to the philosophical dimension of a priori and the perspectives offered by research on this theme in other disciplines, such as economics, management, sociology, anthropology, literature, political science, cognitive science, mathematics, computer science, and so on, further emphasizes the crossing of disciplinary boundaries.

Is it really possible outside the field of philosophy to move from one discipline to another, particularly bringing questions of this type that can potentially be analyzed according to different approaches specific to other disciplines?

The question is particularly acute here. The a priori, in its transcendental conception, as well as in its more ordinary meaning of prejudice, is like a universal entry point, capable of adapting to any field.

But isn't that just an illusion?

Let's try to answer these questions in relation to our field of study: law.

### **3. The foundations of a comprehensive grammar of a priori in law**

What can we do to try and build an all-encompassing grammar of a priori that is not locked into the restricted and limited framework in which it has uncomfortably become entrenched? At this preliminary stage of research into a priori, we shall take two steps: dealing with the risk of capture of a priori by other disciplines (3.1), and building a theoretical and practical approach to a priori that is specific to law (3.2).

#### **3.1 Dealing with the risk of capture of a priori by other disciplines**

The question of how law has been captured by other disciplines, in the human and social sciences as well as in the exact and natural sciences, is an old, wide-ranging, fascinating and difficult story. We've already touched on this theme of how disciplines fit together in our proposal for an antecedent approach.<sup>1</sup> For the time being, let's try to answer the question of how philosophical approaches are accepted in law (3.1.1) and in other disciplines (3.1.2).

##### **3.1.1 How philosophical approaches are accepted in law**

As everyone knows, there is a speciality that straddles philosophy and law: the philosophy of law. This specialization, which requires skills in two fields, generally with one – philosophy or law – taking precedence over the other, is foreign to us. But insofar as it is difficult to deny the

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<sup>1</sup> Bergé (2022).

existence of a strong philosophical dimension to a reflection on a priori, we must analyze the question of how philosophical approaches to the subject are accepted in law.

Let's start with an initial observation.

If we review the analyses previously carried out in and around the law, both on the vocabulary<sup>1</sup> and, as here, on the grammar of a priori, we can say in general, without needing to substantiate it again here, that jurists remain indifferent to philosophical reflections on a priori, the references made to them are most often indirect, and the rare works devoted to the acceptance of philosophical approaches to a priori are in any case rejected.

There's no denying that when it comes to literature on a priori, there's a glaring imbalance between philosophy and law. This may seem all the more surprising given that the father of philosophical thought on a priori, I. Kant, thought a great deal about law, as is shown by the prominent place he occupies in works on the philosophy of law. But the fact is that references to philosophical works on a priori rarely come from jurists, and are for the most part the work of philosophers, possibly working in law.

At the same time, we can see that a reference to the notion of the "transcendental a priori" is often made by jurists, most often to condemn it. But these are always general references, with little or no documentation. Philosophical thought is rarely brought to bear in a precise, scholarly manner. Rather, it is the vague idea that jurists have of what a transcendental a priori might be in terms of their own theoretical constructs. This indirect form is interesting in itself. We can even say, with certainty, that it constitutes an a priori. But the fact remains that it does not, in a rigorous sense, reflect a penetration of philosophical thought into law.

The third remark concerns the rejection by jurists of the few attempts by their peers to build a legal theory based on an in-depth philosophical analysis of a priori. As we have seen, jurists usually ignore them, and when they do take an interest, it is to express serious doubts about them.

Let's continue the analysis with an attempt at explanation: generally speaking, if jurists behave in this way, it is because they have no use for a general theory of knowledge and phenomenology, and this is not entirely due to chance.

Philosophical doctrines on a priori belong broadly to two major movements in thought, led by two great authors: the theory of knowledge and phenomenology. The first, led by Kant, questioned the existence of an a priori condition of knowledge subject to experience, and the second, led by Husserl, addressed the possibility of essentializing the a priori objects of knowledge.

In both cases, to simplify matters, we can say that it is a question for science, which in turn poses three major difficulties for the jurist. In law, can we weigh an a priori condition of legal knowledge against the competing merits of a posteriori experiences? In law, do we have to identify ontologies as a basis for our constructions? As jurists, do we have to consider – a priori – that law is a science?

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<sup>1</sup> Bergé (2024).

The answers to these questions are generally negative: most discussions in law and on the law do not rest on the assertion of a necessary transcendental or ontological a priori; and most discussions in and on law do not presuppose that it has a scientific nature.

Of course, these general tendencies can be contradicted: we can, as some of the authors we have already identified have sought to do, work on the transcendental or ontological a priori of law; we can, as many authors do, postulate a certain scientificity of law, if not in a general way, at least for particular meanings.

But in any case, we need to face the fact: generally speaking, jurists have no use for a general theory of knowledge or phenomenology for thinking about law and making law, for the simple reason that – a priori – law on the whole is not seeking knowledge that could become science.

All this is no coincidence.

Although we consider that the philosophy of science, understood in the broadest sense, makes a major contribution to the theoretical study of the different types of a priori, transcendental or ordinary, we must nevertheless recognize that it constitutes an epistemological impasse for the law.

It is no coincidence that a priori have never been the basis of theories of great scope and influence in law, equivalent to those we know in the field of philosophy. Moreover, although an authority like Kant occupies a significant place in post-modern legal thought, it is not his work on transcendental a priori that shapes legal minds today.

In reality, when it comes to the scientific nature of the law, its relationship to knowledge and experience, everything seems to be undecidable.

As we have recalled above, there is considerable debate whether the law is a science, whether or not there is a specifically legal knowledge, and whether or not it is possible to use experiments in this field.

First of all, on the first aspect of "science", it is possible, on the basis of the known distinction between the actions of "explaining" and "understanding",<sup>1</sup> to be tempted to oppose two realities – nature and mind – and to recognize the existence of a strictly "scientific" approach only for the sciences that explain nature. This analysis is tantamount to excluding law from the field of science. Thus, according to a widely-held view, the law does not explain the nature of things, it merely offers a representation<sup>2</sup> that is potentially unique to it. This representation would place the law in the sphere of understanding the phenomena that surround it, rather than simply explaining them. One can, however, argue the contrary, for example, that the essence of law is profoundly anthropological, so that all legal knowledge necessarily involves knowledge of humanity.<sup>3</sup> The nature of human beings would then constitute an explanation of the law. Faced with these divergent analyses, we can also, in a completely different direction, challenge the very existence of a dichotomy between the actions of explaining and understanding. One author

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<sup>1</sup> Dilthey (1900).

<sup>2</sup> Ost (2010).

<sup>3</sup> McIlroy (2019).

has thus shown that explanation makes it possible to develop understanding, so that the former does not exclude the latter, but rather is enveloped by it.<sup>1</sup> From yet another perspective, we could argue for the existence of a "science of law", whose object would be limited to the description of norms, their internal constraints, and their modes of production, all in a neutral and specifically legal way.<sup>2</sup> Finally, the scientific nature of law can also be expressed in the plural – the sciences of law – particularly connected with the history of law, the sociology of law and the theory of law.<sup>3</sup>

Then, in the field of "knowledge", one can debate at will on the appropriateness of the term to the law or whether other terms, such as "scientific knowledge", would not correspond better to it. It may also be pointed out that the two expressions are similar [science comes from the Latin *scientia* which is the translation of the Greek word *ἐπιστήμη* which means knowledge], and that they do not in any case make it possible to decide the really formidable question of the existence<sup>4</sup> or not<sup>5</sup> of a sufficiently generalized and organized legal knowledge.

Finally, with regard to "experience", while there is little doubt that the arsenal of the jurist is very far removed from that developed by the so-called experimental sciences, it happens more and more often that the law is nourished by these types of experiences.<sup>6</sup> But this does not mean that these experimental laws seek to establish a "truth". At most, they make it possible to construct a discourse oriented towards legal know-how<sup>7</sup> that one will decide, especially at the end of a legislative experiment, to continue or discontinue.

This general state of discussions on the law, of which we give only a very brief overview here, with limited doctrine, demonstrates that philosophical theories on a priori do not offer a perspective suited to the law. If a priori in the scientific sense implies a balancing of a precondition for knowledge and the competing merits of experience, it is clear that these considerations have no direct bearing on the law.

We need to find a new point of departure for reflections on a priori than the scientific nature of law.

Let us conclude with an attempt at compromise: the grammar of a priori in philosophy is a resource not to be neglected in law, and in the give-and-take that is always possible between law and philosophy.

Let's not throw the baby out with the bathwater!

Although philosophical theories on a priori have had difficulty finding a place in law, they have, on the other hand, given rise to extraordinarily rich work on the different forms of a priori, their meaning and their scope.

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<sup>1</sup> Ricœur (1994).

<sup>2</sup> Troper (1994).

<sup>3</sup> Halpérin (2024).

<sup>4</sup> Atias (2002), Zenati-Castaing (2021).

<sup>5</sup> Troper (1994).

<sup>6</sup> Kritzer (2021).

<sup>7</sup> Amselek (1994).

Philosophy offers a detailed typology of a priori (e.g., objective a priori: formal, material, perceived, constitutive; and subjective a priori: known, embodied, corporeal, social<sup>1</sup>), which it may be interesting to test in the context of a legal analysis.

Beyond the strict notion of a priori, philosophical approaches such as those inspired by phenomenology can be revived to try and clear them of all the criticisms that have been levelled at them, especially in the legal field.<sup>2</sup>

Without necessarily aiming to declare transcendental or ontological a priori on which to base legal knowledge, we cannot do without all that philosophical reflection has contributed and continues to contribute to the understanding of a priori and related phenomena, in all their diversity and subtlety.

In short, jurists are not condemned to either simplistic or grandiloquent readings of philosophical a priori. Without necessarily subjecting themselves to a strictly philosophical analysis, they can draw inspiration from works of this type to try to feed their own reflections on legal a priori and phenomena.

A give-and-take between law and philosophy is always possible

In a way, we're coming full circle here: from philosophy to law, passing through a law that is open to other disciplines, in order to start again, if need be, from law towards philosophy.

Let's try to sketch out what this means.<sup>3</sup>

To put it simply, a thorough study of a priori in law can undoubtedly feed philosophical reflection, which is not limited to the philosophy of law.

The hypothesis that we shall endeavour to verify throughout the course of the ANTECEDENT project is that there may exist in law: first, specific methods for dealing with a priori; second, the idea of a pure law, which claims to be its own a priori; and third, a specific part of law capable of capturing and translating a priori in its own way. This may ultimately make it possible to:

- refer to a priori knowledge independent of experience,<sup>4</sup> which raises the question of how these a priori in turn feed their own prejudices;<sup>5</sup>
- focus attention on simple prejudices, with a view to analyzing how they contribute to epistemological reflections on the sociological, historical<sup>6</sup> and academic conditions of scientific discourse;<sup>7</sup>

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<sup>1</sup> Dufrenne (1959).

<sup>2</sup> Amselek (1972), Kanabus (2015).

<sup>3</sup> The development that follows is also the result of preparatory research work carried out in collaboration with Ms. Anne-Laure Thessard, who trained in the philosophy of science and in 2022 held the position of project engineer with the IdEx UniCA ANTECEDENT project (above-mentioned).

<sup>4</sup> Boghossian, Williamson (2020).

<sup>5</sup> Lewis (1923).

<sup>6</sup> Kuhn (1962), Foucault (1966).

<sup>7</sup> Kuhn (1962), Popper (1962).

- develop a renewed phenomenology on the theme of preunderstandings<sup>1</sup> – which too often suffer from a lack of attention – that is focused on the interpretation and therefore the comprehension of our objects of thought.<sup>2</sup>

### **3.1.2 How the approaches of other disciplines to a priori are accepted in law**

Even when we leave behind the philosophical prism of a priori, and look at the acceptance in law of approaches to a priori in other disciplines, we are again tempted to give law a scientific interpretation with reference to other disciplines.

We have identified several works that could illustrate a reflection on a priori in disciplines other than law and philosophy (see supra, § 2.2).

The question that arises again is whether these references to a priori in other disciplines can have a potential impact on the interpretation of law.

The answer seems likely to be yes.

Reflecting on the scientificity of economics, management, sociology, anthropology, literature, political science, cognitive science, mathematics, computer science, and so on, through the prism of a priori, means building new bridges between all these disciplines and the law.

For example, balancing given knowledge and acquired knowledge in economics, the specificity of research in management science, which is underpinned by multidisciplinaryity, the dominance of fieldwork in the establishment of anthropology and sociology as sciences, the alignment of paradigms in computer science with other disciplines, and so on, are all questions that can be projected onto the legal universe. These intellectual questions have many similarities with those that can be explored in law, in terms of what is given and what is constructed, the specificity of this knowledge, the possibility of using fieldwork, the interpretation of a legal rule as a computer science rule, and so on.

This proximity of analyses can be an obvious source of convergence between disciplines.

But convergence does not mean they are indistinguishable. Just as purely philosophical constructs (see above) cannot be imposed on the law, without thought or reflection, in the manner of a simple recipe, so we cannot impose frameworks for interpreting a priori on the law, based on all these other disciplines. But nothing is to stop us from drawing inspiration from it!

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<sup>1</sup> Heidegger (1927), Gadamer (1960).

<sup>2</sup> Heidegger (1927), Gadamer (1960), Ricœur (1994).

At this preliminary, but increasingly advanced, stage of our research, an intermediate conclusion is in order. In our view, it is essential to maintain a multidisciplinary focus, while at the same time aiming to define an approach that is specific to law.

### **3.2 Building a theoretical and practical approach to a priori specific to law**

The aim of this research project is to develop a theoretical and practical approach to a priori that is specific to the law. To achieve this, we need to escape the fate that most often befalls a priori in law. We have two options: to make a priori in law a matter of understanding, and not just knowledge; or to assume that a priori are everywhere, and not just where we would like to leave them.

This shift in strategy is more significant than it first appears. The notion of the a priori is no longer just a question of knowledge. It embraces a broader field: that of understanding the law. Let's see how such a process can be broken down into its various stages.

The first step is that we need to move away from a narrow focus on the “great instruments” of the law.

Taken in their most theoretical dimension, a priori are given two absolute meanings: they transcend knowledge and allow us to uncover ontologies of that knowledge.

If we move away from this dual meaning of a priori – related to knowledge – and open up another perspective on a priori – based on understanding – and if we apply the whole to legal knowledge, then we are no longer compelled to focus on what we call the “great instruments” of law.

Behind this expression, we find all the reflections on the foundations of law, the essentialization or objectivization of its objects, in short, analyses focused on the definition of law.

Without denying the importance of these issues, and the place that the notion of a priori could continue to play in them, we need to open up our perspectives to concerns that are both more modest and broader. More modest, in the sense that a priori may enable us to apprehend constructions of law that play a secondary or accessory role in its definition. Broader, in the sense that other functions of a priori can be added to the transcendental or ontological ones hitherto considered.

We have previously envisaged these open perspectives in a research project on situations in movement and law.<sup>1</sup>

Now we need to broaden our analyses even further, without limiting ourselves to any particular legal issue.

The second step is to try to pave the way with preunderstandings of the law.

The expression “a priori” has strong connotations due to its Kantian transcendental origin and its more ordinary meaning of prejudice.

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<sup>1</sup> Bergé (2021a; 2021b).



After careful consideration, we have decided to retain this term, because it is the one most commonly used to describe, both generally, what comes before, and more specifically, what guides the analyses, whether in a pejorative or approbatory sense.

We could have chosen two other expressions.

The term “antecedent”<sup>1</sup> which, as we have seen,<sup>2</sup> has a high degree of generality, but is not widely used in French (it is somewhat more widespread in English).

The term “preunderstanding”, which undoubtedly comes closest to the meaning we intend to give to a priori in this research, but which also has a specific meaning in philosophy,<sup>3</sup> cannot, as such, guide the whole of our work from the outset, for the reasons we have already mentioned.

But the idea here is to treat the a priori as so many preunderstandings that pre-exist legal constructs and which, moreover, have the interesting characteristic for research of being generally little, if at all, debated.

The third step is that a priori must be turned into a tool for the theoretical and practical understanding of the law.

The phrase “the end justifies the means” fits quite well with the general direction we wanted to give to this research.

If the aim of a research on a priori is to better understand the law, then we have to adopt a broad approach.

There is no question here of limiting ourselves only to theoretical questions about the basis of law or its essence. While our approach undeniably has a theoretical dimension, it does not prefer one legal doctrine over another.

Moreover, the approach envisaged here also has a practical dimension, inseparable from legal knowledge. Understanding the law through its a priori also means trying to understand it through the a priori conveyed by legal practice.

Suppose that a priori are everywhere, not just where we want to leave them.

Behind our desire to conduct a wide-ranging research project that does not lock itself into one narrow interpretation of a priori, there is another goal: to put forward the hypothesis that a priori are everywhere, and not just where we would like to leave them.

How many times have we heard or read the assertion: "That's not law!"

Generally (but not only) uttered by jurists, the sentence all too often sounds like a convenient way of preventing ourselves from thinking about the law, beyond the purported limits that we have set ourselves since the beginning, at the start of our analyses, by ruling out a whole series of working hypotheses from the outset!

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<sup>1</sup> ... which we have retained for the presentation of an "antecedent approach": Bergé (2022).

<sup>2</sup> Bergé (2024).

<sup>3</sup> In particular: Gadamer (1960).

Of course, not everything is law. Taken in its systemic and even cultural dimension, the law is largely self-limiting. It proceeds by “closure”.<sup>1</sup>

But one of two things is true: either we make the definition of law a prerequisite for all legal research and forbid ourselves from thinking beyond it; or we make such a prerequisite definition, and set ourselves the goal of trying to discover the contours of a particularly complex legal phenomenon through its many manifestations.

For us the choice is clear: a broad reflection on the a priori in law, a priori has no limits! All a priori, and consequently all law, can potentially be envisaged, which in no way means that we will not encounter any limits, a posteriori!

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\*      \*

At the end of this article, an intermediate conclusion is in order.

To understand legal phenomena, we must cover the analysis from the most insignificant to the most important.

Perhaps a mistake often made by research in law is always wanting to say important things.

Research into legal a priori may be an opportunity to return to the question of understanding legal phenomena in terms of not only the most important a priori, but also the most insignificant.

Answers to follow...

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<sup>1</sup> On the meaning and scope of this expression in the work of philosopher-sociologist N. Luhmann, see Kervégan (2021).

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