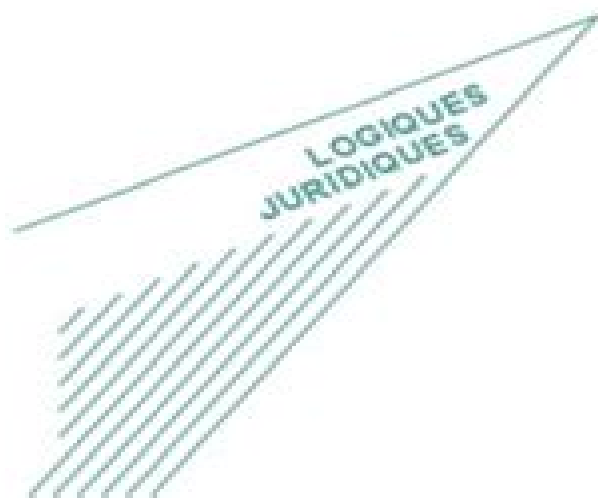


Caroline Foulquier

La preuve et la justice administrative française

Préface de Jean-Arnaud Mazères

Prix de thèse 2009
de l'Association française pour la recherche en droit administratif



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Caroline Foulquier-Expert



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La preuve et la justice administrative française Caroline Foulquier-Expert, 2009 Ainsi que l'affirme le Président Rouvière Le juge administratif n'est pas un juge d'instruction mais l'instruction du procès administratif est une dimension essentielle de sa fonction En effet le juge administratif ne recherche pas la vérité des faits Il cherche à assurer une normalité de la vie administrative Le régime de la preuve découle de cette volonté En matière de recours pour excès de pouvoir le juge soulage fortement le requérant mais sans procéder des mesures d'instruction En matière de plein contentieux au contraire alors que la charge de la preuve retrouve un rôle déterminant les mécanismes de responsabilité pour faute présumée sont des renversements de la charge de la preuve il est plus enclin à mettre en œuvre des mesures d'instruction Faut-il alors comprendre que la preuve a finalement peu d'importance en excès de pouvoir alors qu'elle l'en a beaucoup plus en plein contentieux Est-ce la place du fait au sein de chacun de ces recours qui détermine le rôle de la preuve En réalité si le juge revient toujours la charge de la preuve en cas de doute persistant il manifeste une grande liberté dans l'administration et l'appréciation de la preuve Le souci d'efficacité explique largement ce pragmatisme Son effort de preuve est-il alors suffisant La pratique de la preuve est-elle amenée à subir des changements Si des évolutions sont prévisibles et souhaitables une évolution probatoire paraît cependant peu envisageable La situation est surtout globalement satisfaisante La preuve peut merger au cours de l'instruction par l'application d'une méthode objective et contradictoire Sur ce plan la dimension culturelle de la preuve refait surface L'apparition de la preuve est située historiquement et son évolution s'est déroulée selon une tension constante entre preuve scientifique et juridique preuve rationnelle et sensible puis preuve écrite et orale La preuve devant le juge administratif est travaillée par ces tensions Hérédité d'une procédure rationnelle et écrite la Justice administrative fait aujourd'hui l'objet de débats autour d'un renouveau par la preuve sensible et orale Elle aspire en effet à se rapprocher de son usager et renouveler son image

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Travaux du Laboratoire de Recherche sur la Justice Administrative Laboratoire de Recherche sur la Justice Administrative, 1978

De la justice administrative, etc Adèle Gabriel Denis Bouchéné-Lefer, 1863

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Table of Contents La Preuve Et La Justice Administrative Franccedilaise

1. Understanding the eBook La Preuve Et La Justice Administrative Franccedilaise
 - The Rise of Digital Reading La Preuve Et La Justice Administrative Franccedilaise
 - Advantages of eBooks Over Traditional Books
2. Identifying La Preuve Et La Justice Administrative Franccedilaise
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an La Preuve Et La Justice Administrative Franccedilaise
 - User-Friendly Interface
4. Exploring eBook Recommendations from La Preuve Et La Justice Administrative Franccedilaise
 - Personalized Recommendations
 - La Preuve Et La Justice Administrative Franccedilaise User Reviews and Ratings
 - La Preuve Et La Justice Administrative Franccedilaise and Bestseller Lists
5. Accessing La Preuve Et La Justice Administrative Franccedilaise Free and Paid eBooks
 - La Preuve Et La Justice Administrative Franccedilaise Public Domain eBooks
 - La Preuve Et La Justice Administrative Franccedilaise eBook Subscription Services
 - La Preuve Et La Justice Administrative Franccedilaise Budget-Friendly Options

6. Navigating La Preuve Et La Justice Administrative Franccedilaise eBook Formats
 - ePub, PDF, MOBI, and More
 - La Preuve Et La Justice Administrative Franccedilaise Compatibility with Devices
 - La Preuve Et La Justice Administrative Franccedilaise Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of La Preuve Et La Justice Administrative Franccedilaise
 - Highlighting and Note-Taking La Preuve Et La Justice Administrative Franccedilaise
 - Interactive Elements La Preuve Et La Justice Administrative Franccedilaise
8. Staying Engaged with La Preuve Et La Justice Administrative Franccedilaise
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers La Preuve Et La Justice Administrative Franccedilaise
9. Balancing eBooks and Physical Books La Preuve Et La Justice Administrative Franccedilaise
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection La Preuve Et La Justice Administrative Franccedilaise
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine La Preuve Et La Justice Administrative Franccedilaise
 - Setting Reading Goals La Preuve Et La Justice Administrative Franccedilaise
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of La Preuve Et La Justice Administrative Franccedilaise
 - Fact-Checking eBook Content of La Preuve Et La Justice Administrative Franccedilaise
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements

- Interactive and Gamified eBooks

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