

## Summaries

### **Is Hercules a myth? Ronald Dworkin's theory on interpretation confronted with Alf Ross'**

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*Ole Hammerslev*

The article analyses Alf Ross' theory on legal interpretation through a reading of Ronald Dworkin's ideal typical judge Hercules. Even though Ross and Dworkin traditionally are labelled as respectively realist and idealist and they seem to disagree on other major matters, the article argues that Ross' and Dworkin's theories on legal interpretation are fairly identical. The starting point of the article is that both Ross and Dworkin classify the legal interpretation "constructive interpretation". Both Dworkin and Ross suggest that the judges task is not of mere cognitive character but constructive, which presupposes other motives of the judge than following given statutes and directives. Behind the legal decision lies the judges' personality and morality with which the judges interpret the legal system so it appears as one coherent system. In this way both Ross and Dworkin find that the judges are interpreting from what they find is the best decision.

### **Den autonome retten og studiet av den. Om Henrik Palmer Olsens og Stuart Toddingtons *Law in its own right***

*Morten Kinander*

This commentary is a discussion of a new book by Henrik Palmer Olsen and Stuart Toddington, which raises interesting issues concerning the problem of legal validity. The authors argue, among others things, that there is a central and neglected issue in the previous debates about the concept of validity between morality and legality. This issue is the issue of a sociologically founded methodology, which can be used to shed light on debates about the autonomy of law, legal validity and the concept of the obligation to obey the law. In this connection, I discuss the application of social theory on legal issues in general and the specific problems an account of classical texts in functional sociology raises for the concept of law in particular. Although I agree with the authors that the classics in sociology and sociological philosophy of science is a neglected issue in legal theory, I have doubts concerning the expediency of the use of functional sociology in the attempt to explain an overarching normative framework which purports to account for the concept of validity. It fails, I argue, to explain the normative structure of legal argumentation and excludes the possibility of the development of a non-functional normative evaluative approach.

### **Text analyses through sociology of law – developing a method for the study of social work**

*Lupita Svensson*

The purpose of this article is to describe a socio-legal method for empirical research with respect to communication, the redefinition of problems, and conflicts amongst three significant levels of social work: the judicial level, the administrative level, and the client level. The primary goal of the method description is to add to the development of new methods within the socio-legal field of research concentrating on social work; its greatest value lies in the focus on the need for continued method development. The point of departure is that redefinitions occur in the border crossing between the levels, thus hindering or complicating inter-level communication. A systematic socio-legal textual analysis of administrative documents and court records will make it possible to identify the way in which these redefinitions affect social work and, in the long run, the basic social and cultural security of individuals. The method was developed in conjunction with a number of empirical studies of administrative records in Swedish social services as well as administrative court records; these are also the areas for which this method is best suited.

### **Long trends and paradoxes in Norwegian collective bargaining**

*Torgeir Aarvaag Stokke*

Mediation and compulsory arbitration has played an important role in collective bargaining in Norway. The legislative framework regulating these forms of dispute resolution was originally established partly against the wishes of the major labour market organisations (LO and NHO), but has since the Second World War had support from these organisations as mechanisms for promoting co-ordinated collective bargaining. However, two surprising events in 1982, a Labour Court decision and a complaint to the International Labour Organisation, has weakened the functions of these forms of dispute resolution, and provides much of the background for the current debate on reforms of the Labour Dispute Act.

### **The Debate on the Values Underlying Property Rights**

*Päivi Paasto*

As a result of the modern theories of contract law, the debate on the values underlying property rights is perceived mainly as debate on the relative weights of various principles. It has been emphasised in the field of theoretical jurisprudence that, among the raw materials of legal scholarship, it is exactly principles that form the primary vehicle for the transmission of values into the law. The author argues that the true values underlying the law

cannot be determined, unless the study is extended also to the justifications given for the basic concepts and major institutions of property law. In a contract law context this would mean an inquiry into the justification for the binding effect of contracts. In property law the equally fundamental issue concerns the justification for property rights as an institution. Admittedly, there has been little or no debate on such issues during the past decades.

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In property law textbooks, the justification for property rights is usually restricted to a few remarks in connection with the various modes of acquisition. Thus, occupation is still considered to be the original mode of acquisition, giving rise to property rights in the first place. The author argues that there is, nowadays, only a tenuous link between this debate and the debate on values. It is to be noted, however, that the descriptions of the modes of acquisition derive from a discourse that traditionally touched also on the early origins of private property and its justifications. These issues were also among the core content of legal philosophy.

The classical justifications for property rights as an institution are occupation, contract and labour; in addition, also liberty and utility have featured as alternatives. In this context, the author explores a controversy arising from the fact that lawyers still tend to subscribe to the occupation theory, which from a philosophical point of view has since the 18th Century been discredited as a justification and superseded by the labour theory. Of course, in traditional jurisprudence, the retention of occupation as a justification is linked especially to the need to provide a solid basis for the exclusivity of rights in real property, i.e. land. In contrast, in the philosophical debate, occupation is often dismissed altogether as a valid justification.

In reality, nevertheless, occupation as a justification for property rights has been accepted not only by lawyers, but also by leading philosophers, and as late as in the 19th Century. The author argues the same by looking into the theories of Immanuel Kant and G.W.F. Hegel, both of whom see the occupation justification being supported by liberty as a basic value. What is especially interesting from a legal point of view, is that occupation is not seen as the right of the strongest, but instead as the right of the swiftest. The matter is essentially of the right of the first occupier in a situation where everyone has otherwise a similar right in the property. In other words, occupation establishes a temporal priority of the rights in question. This temporal priority, in turn, is seen as the only neutral principle available; to disregard this principle would constitute a violation of legitimate possession.

Nils Christie

# Kriminalitets- kontroll som industri

## Mot GULAG, vestlig type

Dette er tredjeutgaven av en klassiker som nå foreligger på ti språk. Tallet på innsatte i fengslene har imidlertid økt dramatisk, og i denne sterkt omarbeidede utgaven er det tilføyd to nye kapitler – ett om Straffens geografi, og ett om Russland.

Kriminalitetskontroll er i mange land blitt en industri med nesten ubegrensede vekstmuligheter. Vår samfunnsform gjør at menneskers gjensidige kontroll svekkes. Samtidig er både velstand og adgang til å få betalt arbeid ulikt fordelt. Kontrollindustrien demper disse problemene, den kontrollerer noen og skaper gjennom kontrollen profitt og arbeidsplasser for andre. Vekstmulighetene for denne industrien er blitt så gode at det blir nødvendig å skape grenser for veksten.

Fra tidligere omtale: «This book is yet another outstanding contribution from one of the world's leading criminologists. Like all of his work, it combines a magnificent personal quality with hard data and analysis.»

*William J. Chambliss*  
*The Criminologist*

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