

Abstracts

A Passage to “India“: Toward a Transformative Interdisciplinary Discourse on Law and Society

REZA BANAKAR

This paper begins by addressing some of the objections raised by Thomas Mathiesen, Håkan Hydén, Jørgen Dalberg-Larsen and Inger-Johanne Sand regarding my critique of the theoretical state of the sociology of law, which was published in *Retfærd* three years ago. Using the criticism directed towards my previous position constructively, I intend to go beyond the limitations of the earlier discussions by investigating the possibility of enhancing the theoretical de-

velopment of the sociology of law in a more coherent fashion, whilst safeguarding the diversity of views within the socio-legal field. I shall suggest that one way to develop the sociological studies of law further could be found in devising and applying a reflexive matrix capable of containing the tension between adopting an “internal“ or “external“ perspective on law and legal behaviour.

Progressive Process

PER HENRIK LINDBLOM

The author discusses the present-day Swedish law of procedure in the light of principles, such as access to justice and progression. He states that the law of procedure is political; it should enhance the realisation of the underlying material norms decided by a democratic system. The process should be progressive and dynamic instead of being

an obstacle to achieving the goals of material legislation. The author points out that modern disputes involving several parties and concerning matters of public policy, environment, and fragmented interests require more flexibility and better access to justice than existing procedure can offer. Suit the action to the world!

WTO and trade in genetically modified organisms

CHARLOTTA ZETTERBERG

In several European countries there is a desire to control trade in products that contain or consist of genetically modified organisms (GMO-products). At the same time these countries are, through their membership in the union, dependent on rules and practi-

ces developed within the framework of the World Trade Organisation (WTO). In the light of this, the author discusses what legal possibilities and obstacles there are to issue certain restrictions on GMO-products.

What is the answer to the fishing pirates? – A legal and legislative discussion of Norwegian domicile jurisdiction on the high Seas.

PETER ÖREBECH

Is it possible to halt high seas piracy fishing? This article examines the role domicile state jurisdiction plays over vessels owned by both citizens and inhabitants, who engage in high seas fishing without regard to the flag they fly, as illustrated by Norwegian jurisdiction competence. For ships flying a national flag, legal solutions are well recognized; the flag state enjoys exclusive competence. However, more challenging is the issue of “bare boat charters,” stateless ships and vessels owned by Norwegians, a problem the government itself has not properly acknowledged despite the competency of International law, *in casu* the flag state jurisdiction of “*territoire flottant*.” I advocate that private ship owners be dispossessed of their exclusive autonomy, the ability to trade off one jurisdictional power for the benefit of another. My proposal is that domicile states be com-

pletely liable for nationals and citizens involved in piracy, by expanding well-established diplomatic protection for ship owners. Since the Norwegian Merchant Ships Registry does tie nationality to physical ownership, habitation or citizenship, and not the formal location of the company or other legal persons, “register hopping,” opportunities built upon empty “post-box companies,” would rapidly vanish. Clearly the Law of the Sea does not bar a domicile state from implementing jurisdiction upon stateless ships. Either does it prevent a domicile state from prosecuting a ship owner who escape his domicile duties by flying the flag of a state whose registration is either “territorial contrary action” against the rights of that state or lacking the necessary “genuine link” between flag state and vessel. Because unilateral action has from time to time resulted in new international

law (*jus cogens*), should Norway take the first steps to persuade others to follow suit? Being an *opinio juris necessitatis* this practice

may provoke an international breakthrough to domicile state jurisdiction.

Affirmative Action – and Democracy, Justice and Equality

ANNA HOLMGREN

“Affirmative action” or positive discrimination has been discussed vividly in Sweden during the last decade. In 1995, the Swedish government allocated new professorships to such fields of scholarship in which women were underrepresented. Only women who fulfilled the qualifications for a professor

could be nominated to these so called Tham-professorships. In a decision of July 1st 2000 the European Court of Justice decided that this arrangement was against the equality principle of EU law. The article discusses this decision and arguments pro and contra positive discrimination.

Marianne Hognestad og Knut R. Steenberg
Adopsjonsloven
Kommentarutgave

Denne boken er den første samlede juridiske fagbok om adopsjon. Hver bestemmelse i adopsjonsloven blir grundig kommentert, og saksbehandlingen i lys av forvaltningsloven er viet stor oppmerksomhet. Boken har et eget kapittel om Haagkonvensjonen av 1993 om vern av barn og samarbeid ved internasjonale adopsjoner.



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