

Abstracts

The legal silhouette or A legal historical reading of De l'esprit des lois by Charles Montesquieu

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De l'esprit des lois is a treasure box filled with the observations, assertions and reasoning of Charles Montesquieu, who worked on the book for twenty-five years. To often have this treasure box been presented as a match-box only containing the quotation

"But the judges of the nation are, as we have said, only the mouth that pronounces the words of the law", and the author and his legal positivism. The aim of this article is to offer a more complex reading of De l'esprit des lois.

Some theoretical Aspects of Alternative Dispute Resolution and Mediation

KAIJUS ERVASTI

In recent years, alternative dispute resolution (ADR) and mediation has attracted increasing attention in Finland and also in practice there have been attempts to create new ways to deal with conflicts. This article seeks to present a structured view of the different aspects, approaches and discourses pertaining to ADR and mediation.

The different ways of resolving disputes and the different alternative methods have

been classified in many different ways. However, in the discussion a distinction has often been made between adjudication, conciliation and mediation, negotiation and arbitration. The most important form of alternative dispute resolution is mediation. In some mediation models, the mediator is quite active. In other mediation models, in turn, the mediator is more passive and seeks primarily to get the parties to meet one another and

decide the matter among themselves. A common feature of the different mediation models is that they seek to achieve a mediated settlement through mutual discussions that satisfies both parties, and the case is not decided by an outside person on the basis of normative provisions, as when a judge adjudicates.

The debate on disputes and on ADR has been multidimensional and manysided indeed. Neither the practioners nor the theoreticians have any uniform view of conflict reso-

lution. It is very difficult to carry on debate on "disputes", "conflicts", "dispute resolution" or "alternative dispute resolution", because the terms may stand for many different concepts, depending on theoretical paradigm, values and ideology that the debator subscribes to. There is need for empirical and theoretical research on dispute resolution in the future, even thought it remains unlikely that any unified theory can be arrived at.

To what extent are economical, social and cultural rights secured by the European Convention on Human Rights?

LINE RAVLO

Economical, social and cultural rights are not secured by the ECHR as such. However, economical, social and cultural arguments are regarded as relevant arguments when interpreting the ECHR. The main reason why such arguments are relevant is that the States have an obligation according to Article 1 of the Convention to "secure" the rights. In order to fulfil their obligations according to this article, States are therefore obliged to remedy factual obstacles for practical and effective rights. In addition, the European Court of Human Right in Stras-

bourg has emphasised that requirements for a "democratic society" is the basis for the evaluations made according to the ECHR. A democratic society, according to the Convention, requires to some extent protection of economical, social and cultural rights. Consequently, such rights enjoys a implied protection. However, the opinion of the author of this paper is that even though such application of economical, social and cultural arguments is quite extensive, it does not give the rights as such a protection by the Convention.

The trivialization and demystification of law

BO CARLSSON

The essay discusses the trivialization and the demystification of law in the wake of the image of law in popular culture. The reflection is related to Ally Mcbeal, lawyer jokes

and the comedy liar, liar. The theoretical departure starts with Robert Sherwin's analysis of the vanishing line between law and popular culture.

Separation, before talaq under Shariah, and the Danish Law

RUBIA MEHDI AND NELL RASMUSSEN

Among the five cases presented, one is that of Zabida. She is thirty-three years old and she has a job. Her marriage was arranged by her parents who migrated to Denmark from a village in Pakistan in the late sixties. However, the marriage did not work, and Zabida applied for separation. During the period of separation Zabida's husband went to Pakistan and she received information from her family that he had got married in Pakistan under customary law. Zabida's niece in Pakistan sent her photos of the husband's wedding. Zabida felt confused. The husband refused to divorce Zabida in Denmark.

This article aims at providing a theoretical framework for an analysis of Zabida's case and similar cases mentioned in the article thus providing a comparative study towards relating family law and the development thereof with the family structure to try to understand what course of action individuals may take when facing a dilemma within a society with plural legal structures, where the mental space may differ from the physical or public space. The actions of the social actors lead towards the emergence of new legal norms and values. However, a theoretical framework is important for making of adjustments towards new norms.