

## Abstracts

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### Legal 'Field' or Legal 'Network'? A Bourdieusian Critique of Manuel Castells' Network Society

MIKAEL RASK MADSEN

The article offers a critique of the sociology of network society developed in the works of Manuel Castells. From the point of view of reflexive sociology, the article seeks to challenge the key notions of network society in regard to the study of law and globalization. Initially, the article outlines the basic concepts of Castells' work in order to provide an overview of the general sociological approach of Castells. These concepts are then compared and criticized in the light of

the reflexive sociology developed by Pierre Bourdieu. On this background, the article evaluates to which extent Castells' approach is suitable to the area of law and society. Furthermore, by introducing the subject of human rights, the article analyzes Castells' contributions to the understanding of law and globalization. All together, the article concludes that it is questionable whether Castells' technological paradigm can be extended to the area of law and society.

## Legal Realism or Legal Unrealism?

KNUT BERGO

Despite severe criticism on a philosophical level, Pragmatic Legal Realism has maintained its dominant position in Norwegian mainstream legal circles, and possibly also in mainstream circles elsewhere in Scandinavia. The roots of this model is quite old, but important aspects of this model can be traced back to the great Danish legal philosopher Alf Ross, with Torstein Eckhoff and Nils Kristian Sundby as contributors to the Norwegian version. The Pragmatic Legal Realism's portraits a judicial decision making model with great emphasis on the non-formalistic and practical elements, most notably by stressing the importance of the so-called "reelle hensyn" ("real considerations") denoting the legal decision-maker's own substantial/instrumental views as to how a legal issue should best be solved.

Knut Bergo (Dr. juris) defended his doctoral thesis *Tekst og virkelighet I rettskildelæren* in Oslo in February 2002 (English translation of title "Text, Reality and the Sources of Law" – available in Norwegian version only). The book offers i.a. a subversive close reading of texts by Alf Ross and his Norwegian followers, identifying the ontological, epistemological and normative presumptions behind. Bergo identifies their model as deeply rooted in political ideology (the Social-BureauDemocratic Project) and explores how legal realism turned into legal dogmatics with normative implications, without the authors ever abandoning their quest for a true factual description of the decision-making process

The article offers an introduction to *Tekst og virkelighet I rettskildelæren* and is based upon a public lecture held by Bergo when defending his doctoral thesis (self designated theme).

## Pursuing Theory in Law on Loose Ground

STEN SCHAUMBURG-MÜLLER

Is law research a purely empirical activity, or is it also practical in the sense that it should produce good solutions to real problems? Is it possible to take 'real life' as a starting point when analyzing law, without ending up disregarding law? Is it possible to use 'legal pluralism' as a theory when doing research related to law? Is an attempt to reconstruct African customary law by researching

women's lives likely to succeed? Does African law contain more than imported law and customary law? And is law a mere reflection of society, or could it be used as a tool for change? These questions are scrutinized in the review article of *Pursuing Grounded Theory in Law. South-North Perspectives on Developing Women's Law*

## Two myths about legalization of welfare rights

ELI FEIRING, SYNNE SÆTHER MÆHLE, HILDE WISLØFF NAGELL

This essay discusses two "myths" concerning the relationship between law and politics when rights are made statutory, namely politicisation of law and legalization of politics. The common core of the two myths is that law has had an increased dominion of power at the expense of the legislature. The main point of the essay is to question this assumption. The essay argues that the two myths may stand for different concepts, depending on what kind of basic legal-theoretical pre-

suppositions one subscribes to. A discussion of the Norwegian right to specialized health care and rulings from the Supreme Court of Norway regarding welfare rights, show that the common core of the myths of a shift in power is not unquestionable. The conclusion of the essay is that terms like "politicisation of law" and "legalization of politics", should be used carefully and with due awareness to the many facets of the relationship between law and politics.

## Velfærdsstatens fremtidsmuligheder Nogle retlige perspektiver med særligt fokus på engelsk retsteori

CARSTEN HENRICHSEN

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This article deals with the new challenges to administrative law stemming from the increasing use of market mechanisms in the provision of public services. This development puts the general administrative principles of legality and due process under pressure. However, so far these radical new developments have – at least in Denmark – largely been ignored in administrative legal theory, which has, above all, been unable to adopt a normative attitude to this development. The question is whether the “Market State” is the only heir of the Welfare State, or whether other options exist for the future state government. Drawing on English legal theory the article stresses the need of generating closer relationship between state and

society for the purpose of promoting a preventive approach to the social problems caused by the general development in society. Based on the author’s own theoretical studies, the article suggests the “Environmental State” – in a wider sense – as an alternative option, which is better suited than pure liberalistic market solutions to fulfil this task. In international political theory the concept of “Environmental State” is also known under labels as “Negotiating State” or “Networking State”. The notion “Environmental State” is chosen here because of its powerful normative connotations, indicating a governmental form of regulation directly focused on the social problems where they arise, namely in the social or physical environment.