

Abstracts

How do law students work with legal texts?

HELGE STRØMSØ

We know that Norwegian law students use more study time to read expository texts than their fellow students. Unfortunately we know less on how law students read these texts. In this article I focus on some important aspects of reading within higher education, with a focus on students' reading strategies and their reading of multiple texts. Re-

sults from a case-study at the University of Oslo indicate that law students give too much priority to textbooks and too little to primary sources like law paragraphs and legal cases. Moreover the students seemed to underestimate the need to construct coherence at the level of chapters or whole texts, as well as coherence between different texts.

A critical evaluation of modern hermeneutic legal theory

MORTEN KINANDER

The article represents the assigned topic of the mandatory lecture for the doctoral degree in law. It argues that while hermeneutics may in many ways clarify the cognitive presuppositions, and undermine a purely descriptive approach to law, it nevertheless does not represent what a theory of law needs the most, namely an approach to legal ques-

tions which establishes and makes possible a critical review of legal practices. Basing a legal theory on a hermeneutic approach does not further the openness, transparency and justificatory enterprise that jurisprudence should be engaged in. The article also discusses legal realism, as it has been claimed to represent a hermeneutic approach to law.

From homo sacer to homo politicus

Giorgio Agamben's political philosophy as occasion

ALEXANDER CARNERA

To investigate, political and legal and democratic opportunities is to ask how today it is possible to understand the political and, therein, the concept of the political. The Constitutional State, that which is governed by Law, has more and more become a mask of control society and its disciplinary of bio-power mechanism. We require an openness in thinking politics and law to ways that lie far from the obvious statefounded institutions. We must aspire to consider a more alternative political thinking.

The project of Agamben has two facets: One is a rethinking of the State that reveals a disciplinary dispositiv of power in a growing bio-political production in which the state-of-exception (Carl Schmitt) function as a new expanding nomos of law and politics that ties together the exclusion of man without rights and the decision of the sovereign; the other is a thinking of community and

subjectivity understood as a radical ethical-political project that provides tools as to how homo politicus can return to society as a constitutive power (not constitutional) creating an innovative democracy, a law creating and experimental politics. Agamben asks whether again a political community is possible as an immanent secular task? If the refugee breaks with the relation between man and citizen, it becomes necessary to formulate an alternative to the state-nation-territory construction and the selfconstituting exclusion of bare life in political life. Agamben's alternative is the form-of-life Subjectivity as »agent« or »identity« obstructs the discovery of community. Subjectivity and community should be attached to »whatever being«, and potentiality. This makes possible for another more open dimension of subjectivity that could travel the path to another understanding of »citizenship« and the idea of free movement.

Foucault and Law. Implications of the Analytics of Power for the Sociology of Law

CHRISTIAN BORCH

Through a power analytical reading of Michel Foucault's work, it is argued that Foucault

offers many important insights to legal theory and sociology of law. In particular,

the implications for discussions of the differentiation between law and power are examined which are then used as a critique of

Niklas Luhmann's systems theory. Simultaneously, a number of common misinterpretations of Foucault are identified.

Care work and the Women's convention

STINE JØRGENSEN

The essay describes the legal position of the care work in a Nordic context. The legal framework is the Convention on the Elimination of All Forms of Discrimination Against Women. According to the Women's convention, care responsibilities rest upon both men and women. However, large differences exist between men and women as to the level of participation in the care work. Culture and tradition has great influence in the shaping of

stereotyped genderroles. It is argued that traditional stereotyped images of the sexes must be included in this legal context. Moreover the case of immigrant women is described. The group of immigrant women referred to in the essay is characterized by a very low level of participation and integration in the Danish society. It is argued that the gender perspective has a potential of helping to include this group of women in society.

Minority women's right to family and article 8 in the European Convention on Human Rights

SIA SPILIOPOULOU ÅKERMARK

The right of minority women to a home and family life under article 8 of the European Convention on Human Rights is examined in the present article as a micro-case of the preparedness of the European Court of Human Rights to discuss gender aspects of traditional minority lifestyles. Recent cases, such as those concerning Roma women in the United Kingdom, have revealed several crucial aspects of the special needs and circumstances of minority women. At a normative level, the balance between on the one hand environ-

mental and planning regulations and on the other a traditional lifestyle remains an open question, while some judges of the European Court of Human Rights have tried to resolve it by introducing a test of the concerned individual's »real and acceptable alternatives«. This test has, however, only been used with very limited gender sensitivity. Finally, the review of the caselaw shows that the Court is increasingly influenced by other international instruments concerning minorities.