

Abstracts

Law and Religion

KJELL Å. MODÉER

Already the enlightenment philosophers removed religion from the realm of the public, and when the Swedish professor of philosophy Axel Hägerström pronounced his categorical mantra: »Furthermore I think that metaphysics must be destroyed« the motto for secularised modernistic 20th century was established. In the late modernism of our time legal culture have found new ways of opening

the door to religion – this is so with respect to legal science as well as constitutional culture and in practices jurisprudence. In this article, the author provides a view over an important contemporary discourse in the multicultural USA and reflections of this discourse in Germany and the Nordic countries.

Teaching the infidel with a sword – thoughts on »de Indis« after Iraq

JUHA-PEKKA RENTTO

Juha-Pekka Rentto asks as to whether it may be permitted to wage war against a foreign state with the purpose of securing human rights for its citizens. He examines contributions from Francisco Vitorias, Juan Gines de Sepulvedas and Bartolome de las Casas in the Spanish debate over Spain's role in the West Indies in the 16th century. If those ancient crusades against the Indians were not legiti-

mised by the eternal welfare of the Indians, how should similar missionary methods of today be applied against a state who refuse to accept our new secular religion, i.e. the Western conception of human rights? At the very least, the author claims, it ought to be proven that these rights rest on more firm ground than a religious belief in a self-indulging view of mankind.

When the pope telephoned Norway's Prime Minister – muslim women and divorce

HEGE STORHAUG

An increasing number of women in Europe are fully or partly deprived of the right to divorce, while their husbands have retained the full access to replace their wife with a new one. Transnational marriage entails that muslim women are being forced to relate the legal system in their country of origin, which,

with no exception is discriminatory against women. This new problem in our time has serious consequences for both individuals and society. But where there exist the political will, there are also political solutions to be found to secure all muslim women an individual right to formal divorce.

Encounters between Islam, international and local law: different approaches to the position of women in law and society in Pakistan illustrated by two recent books

ANNE HELMUM

Many Islamic states have today been put under pressure to fulfil its international obligations towards women. The complementary and hierarchical gender roles are difficult to reconcile with the principle of equality in the United Nations convention on womens rights. In Pakistan, which ratified the UN convention on womens rights without reservations in 1996, a growing womens and human rights movement demands increased equality between the sexes in politics and in the sphere of family and the workplace. In this review article Anne Hellum examines two books on this issue by Shaheen Sardar

Ali and Rubya Mehdi respectively. While both of these authors are critical of the perception of Islam as a universal, consistent and static system of norms, and are preoccupied with strategies for the amelioration of womens condition under muslim law, their strategies differ. While Ali focuses on conservative mechanisms of interpretation, Mehdi argues that it is not Islam but rather local customary law that is the real source of discrimination. The article analyzes the perspectives of the two different approaches to understanding discrimination against women.

Women, Religious Law and Religious Courts in Israel – The Jewish Case

MARGIT COHN

In 1987, after thirty years of marriage, Mr. and Mrs. Bavli, two Jewish Israeli citizens, received a divorce decree from a regional rabbinical court – the only institution authorized to grant divorces to Jewish couples in Israel. The rabbinical court held exclusive jurisdiction with regard to ancillary issues – alimony and division of assets – since the husband was first to apply to that court. His choice of the rabbinical court over civil courts, which have concurrent jurisdiction on monetary matters arising from divorce, was not accidental. In his case, as in others, the religious court applied its own rules, which followed religious edicts, and denied the wife half of the marital property. Instead, a flat sum was awarded. The wife could have gained access to the civil court only if she had preceded her husband and won the jurisdic-

tion race for division of assets. Mrs. Bavli's application against this ruling, lodged before the High Court of Justice at the Supreme Court of Israel, resulted in a remedy – and a clear ruling, after several decades of state independence, that religious courts should follow Israeli civil law in its entirety. This included a 1951 statute that enshrined equality between the sexes, a statute that was not, apparently, applied earlier by the religious courts. But the intrinsic tension between state-authorized religious courts, intent on applying religious law, and the civil legal system is still very much a feature of Israeli society. This article examines this tension and its implications for the status of women. It is thus a case study of the possible outcome of institutional autonomy of religious institutions in a state's framework.

Democratic fundamentalism. An essay on tolerance in the light of the decision of the European Court of Human Rights in the Refah case

JENS TEILBERG SØNDERGAARD

In February 2003 the European Court of Human Rights passed a judgment whereby it accepted a decision from the Turkish Constitutional Court whereby a Turkish political

party dedicated to Islam was prohibited. According to both Courts The Islamic party, Refah Partisi (The welfare party) threatened the fundamental democratic principle of the

secular society. The article examines ECHR's understanding of the principle of secularism, through a parallel reading of the Refah Judgment and John Locke's *A Letter Concerning Toleration*. Similarities, but also important differences between the two are found. Thus Locke's letter is primarily a defence of the minimal state, while ECHR defends the right of state to protect its own institutions.

Where Locke proposes an argument against prosecution of religious minorities, the secular principle becomes, for ECHR, an argument for the state's democratic right to protect itself vis a vis religious minorities. It is argued that the fear of religious fundamentalism seems to lead to democratic fundamentalism.

Church Autonomy

LISBET CHRISTOFFERSEN

Access to legal personality is, from a legal point of view, the most important change in the organisation of the Swedish church (Svenska Kyrkan) as of 2000, and this is henceforth the most significant difference between Svenska Kyrkan and a number of other Lutheran public churches. There is also a wish among the new democracies in the eastern part of Europe, that national churches may participate in the nation-building as a central and state-controlled public body. However, access to Church Autonomy has for some time been considered a central element in the freedom of religion as interpreted in European

legal theory. The article analyzes the judgment by the European Court of Human Rights in the case of *The Metropolitan Church of Bessarabia and Others vs. Moldova*. The Judgment establishes that legal personality, also from the point of view of the Court is central to the protection of freedom of religion, just as the judgment establishes that states are obliged to protect religious pluralism. Thereby the Court makes an end to the dream of national churches as state-churches in the new democracies and opens up for a legal critique of Nordic state-churches.