

**JUTINTRO, autumn 2010:**

**INTRODUCTION TO THE NORWEGIAN LEGAL SYSTEM**

*Main Aspects of Legal Methodology/Sources of Law*

**Dates: 1 and 8 September**

**Lecturer: Jan Helgesen**

**Time 14.15-16.00**

**1. Introduction**

- 1.1. Some terminological questions
- 1.2. Different approaches to legal methodology
- 1.3. A realistic, Scandinavian approach
- 1.4. The three main issues in legal methodology
- 1.5. The metanorms in legal methodology
- 1.6. Different arguments/"sources"
- 1.7. Facts

**2. Statutes and their interpretation**

- 2.1. "Definition"
- 2.2. Why are statutes given such importance?
- 2.3. Relevance
- 2.4. Interpretation of statutes

**3. Preparatory works**

- 3.1. "Definition"
- 3.2. Different kinds of preparatory works
- 3.3. Relevance
- 3.4. Interpretation
- 3.5. Weight

**4. Precedents**

- 4.1. "Definition"
- 4.2. Relevance
- 4.3. Weight

**5. Unwritten law (customs)**

**6. Different values as arguments in legal methodology**

## *Norwegian Legal History*

**Dates: 15, 17, 22 September**

**Lecturer: Geir Heivoll**

**Time 08.15-10.00**

### **Part One: Overview**

1. The basic aims of the lectures
2. The important phases of the Norwegian legal history.
  - a. The problems of making periods in history. b. The Middle Ages (MA), ca 800-1536.
  - c. The Age of Union, 1536-1814. d. The Modern Age, 1814- to the present.
3. Some general characteristics of the Norwegian legal system.
  - a. Some simple facts about Norway. b. The organisation of property - lack of feudalism and freeholder system. c. The center and the regions. d. The Kingdom/ the State and the statute law - tradition since 13th Century.
4. The Norwegian legal system and its 'foreign' sources.
  - a. On legal contacts and transplants in general. b. National identity and the status of legal transplants. c. Canon law and Roman law in Norway during the MA. d. Continental law (German-Roman law) and Natural law until 1800. e. 1800 to the present. Scandinavian law, French and German law.
5. Some important subject matters of legal history
  - a. Legal institutions . b. Substantive law c. The legal profession d. The legal science.
6. Overview of Norwegian history
  - a. Middle Ages (1) ca 800-1050(2) ca 1050-1220 (3) ca 1220-1500
  - b. The Age of Union ca 1537-1660 / 1660-1814
  - c. 1814 and the new constitutionalism and the union with Sweden.
  - d. The University of Oslo and the Faculty of Law 1813 -

### **Part Two: State-Building and Royal Law-Making in Norway in the Twelfth and Thirteenth Centuries**

1. Introduction: Interpretations of royal legislations of the Scandinavian countries in the thirteenth century
  - 1.1. The problem to be discussed in this lecture
  - 1.2. A survey: 'Royal legislations' in Scandinavian countries in the second half of the thirteenth century and the beginning of the fourteenth century
2. The growing interest of the king and the church in dispute settlement
  - 2.1. A perspective of the legal history of the Norwegian high Middle Ages
  - 2.2. The law of the land. The assemblies for settling disputes and the regional lawbooks (until the 1270s)
    - a. Introduction. b. Local assemblies — domr c. The order of the Ting d. The role of the 'lagmann' e. Regional law codes and the lagting as legislator f. The law-making process in the twelfth century under the management of the king: A discussion on the law of royal succession of 1164

### 3. Conclusion: The legislation of King Magnus 1274-76

## **Part Three. The Role of the Court in the Nineteenth Century Norwegian Legal System**

1. Introduction
2. The Constitutional and Political Framework of the Court
  - 2.1. The Historical Background of the Norwegian Constitution of 1814
  - 2.2. The character of the Constitution
  - 2.3. The political and administrative elite in the nineteenth century
  - 2.4. The introduction of judicial review in Norway
3. The legal quality of court practice (doctrine of precedent) and the court as a rule maker: nineteenth century theories
  - 3.1. Introduction
  - 3.2. The dogma of independence
  - 3.3. The modern system of publishing court decisions
  - 3.4. The models of legal science: Theories on the sources of law and on interpretation of law
  - 3.5. The Doctrine of precedent and the law-making function of the courts

## **Part Four. Scandinavian Legal Realism**

1. Introduction
  - 1.1. The themes of this lecture
  - 1.2. What is 'Scandinavian' in Scandinavian Realism?
2. Some aspects of the realism of Scandinavian legal realism
  - 2.1. Hägerström and the Uppsala School
  - 2.2. Alf Ross' legal realism as a theory of legal science
  - 2.3. Some aspects of Norwegian legal realism after 1945
3. Models of legal reasoning in Norwegian legal theory
  - 3.1. Outlining the issues — theories on sources of law and interpretation
  - 3.2. Terminology. The description of the stages of legal interpretation and of judicial decision making

## *Constitutional Law*

**Dates: 13, 20, 27 October and 3 and 10 November**

**Lecturers: Eivind Smith and Fredrik Sejersted**

**Time 14.15-16.00**

**Outline of the lectures and reading assignments:**

*NB Each student should carry with them an offprint of the text of the Constitution (in translation into English, see the following web-sites) to the lecture room:*

<http://www.stortinget.no/In-English/About-the-Storting/The-Constitution/>

<http://www.stortinget.no/en/In-English/About-the-Storting/The-Constitution/The-Constitution/>

**(1)            October 13**

**I – The Sources of Constitutional Law, The Structure of the Constitution, Constitutional amendments**

Reading assignment:

- the Constitution of Norway (in general, but with a particular view on the structure, the separation of powers system and Article 112 (constitutional amendments))
- Wilberg & Andenæs, *The Constitution of Norway* pp. 9-19, 137-139,
- Eivind Smith, *Constitutional Cultures: The Constitution between Politics and Law*

Lecturer: Professor Eivind Smith

**(2)            October 20**

**II – The system of Government: Main elements**

Parliament (Stortinget) – elections – composition – functions – procedures  
 The executive – the King – the Cabinet – government and administration  
 Parliamentarism Norwegian style – ”negative” version – votes of confidence  
 Checks and balances – parliamentary control (oversight) of the executive  
 Norwegian political life – coalitions – minority and majority governments

Reading assignment:

- the Constitution of Norway, parts B and C
- Wilberg & Andenæs, *The Constitution of Norway* (1987) pp. 21-25, 47-55, 63-66, 87-90

Lecturer: Professor Fredrik Sejersted

(3) **October 27**

**III – Norway’s relationship to European integration – constitutional aspects**

The common national constitutional challenge: Combining “sovereignty” and supranational European integration

Relevant constitutional provisions: Articles 1, 26, 93 and 112

Transfer of “sovereignty” under Article 93 – how far?

Norway and the EU: Outside & inside at the same time – the EEA Agreement

Effects of European integration on the national (i) parliament, (ii) executive, (iii) judiciary – constitutional and in practice

Reading assignment:

- the Constitution of Norway, art. 1, 26, 93 and 112
- Eivind Smith, *European Integration and the Constitution of Norway*

Lecturer: Professor Fredrik Sejersted

(4) **November 3**

**IV – The judiciary – and judicial review of legislation**

The Norwegian judiciary – constitutional basis – composition – structure

Judicial review of legislation and administrative decisions

Judicial review of legislation based on the constitution

Judicial review of legislation based on the ECHR and EU/EEA law

Reading assignment:

- the Constitution of Norway, part D
- E. Smith, *Courts and Parliament: The Norwegian System of Judicial Review of Legislation*

Lecturer: Professor Fredrik Sejersted

(5) **November 10**

**V – Protection of human rights in Norwegian law**

Overview – national and international provisions on human rights

The catalogue of rights in the constitution – less than impressive...

The ECHR and UN conventions as part of Norwegian law – status

Example: Protection of freedom of expression – NC art 100 – ECHR art 10

Example: Protection of minorities – the Sami population – NC art 110a

Reading assignment:

- the Constitution of Norway articles 2, 50, 53, part E

- Wilberg & Andenæs, *The Constitution of Norway* (1987) pp. 20, 107-109, 117-120, 128-129
- “*There shall be freedom of expression*”. *Proposed new Article 100 of the Norwegian Constitution* (pp. 9-14, 27-40)
- Eivind Smith, *Constitutional Protection of Minorities: The Rights and Protection of the Sami population in Norway*

Lecturer: Professor Fredrik Sejersted