DIOGENES

Abstracts

Diogenes
2015, Vol. 60(3–4) 182–186
Copyright © ICPHS 2015
Reprints and permissions:
sagepub.co.uk/journalsPermissions.nav
DOI: 10.1177/0392192115600612
dio.sagepub.com
SAGE

Judging the Mafia: Categorization under Law and Moral Economies in Italy (1980-2010)

Deborah Puccio-Den

This paper describes the work that jurists, prosecutors, judges and experts had to carry out – sometimes paying with their own life – to defend the thesis that the *mafia* actually exists. It underlines the effects of this assertion for the 'moral economy' of Italian society. The paper starts with a historical reconstruction of the process that led to a legal definition of the mafia as a 'criminal association' in September 1982. This juridical recognition was the precondition to any possible trial against this particular secret society. It then analyzes the judicial viability of this initial definition – known as the 'Buscetta Theorem' from the name of the former member of the mafia who eventually revealed its structure to the Italian prosecutors – which focused on the organized and centralized nature of the mafia, and the subsequent adjustments of this original formulation to the diffused nature of the mafia phenomenon, producing new penal categories that redefine the boundaries between legal and illegal worlds. The ongoing debates about this definition within Italian society shed a light onto the limits of what can or cannot be accepted within a democratic society.

The 'Public Interest' in India: Contestation and Confrontation before the Supreme Court

Sarbani Sen

The phenomenon of Public Interest Litigation (PIL) is a judicially crafted one and primarily consists of the constitutional court's expansion of fundamental rights on the one hand, and procedural innovations to create better opportunities for disadvantaged groups to gain access to the legal system on the other. It has created a renewed conception of justice, and has enabled the court to augment and validate its own authority as the 'guardian' of public welfare, and as the constitutionally appointed branch of the state to enforce the rights of the 'public'. PIL at one level appears to have enabled the justice system and laws to define and shape social and political interactions and to channelize democratic pressures for gaining a response from the state. But it has also been a process by which law and justice emerge from social and political interaction. This new interaction between the realm of judicial decision making and state governance has created adjustments and adaptations and the creation of new legal acts, as well as systemic tensions and conflicts. The paper concludes by looking at broader questions that PIL generates for processes of civic participation, representative democracy and democratic polity under the constitution.

https://doi.org/10.1177/0392192115600612 Published online by Cambridge University Press

Between Law and Customs: Normative Interconnections in Kabul's Courts of Law

Antonio De Lauri

The Afghan normative scenario is composed of customary practices, shari'a principles, laws promulgated by the state and international law. Studies on this arsenal tend to give special attention to the coexistence and/or clashing of different sources of law, but they usually overlook the interrelations that are created through the merging of values, norms and socially recognised customary practices. In particular, little attention has been given to the role that customs play within the judicial structure. A dichotomous perspective has thus prevailed in the history of law in Afghanistan, where 'formal justice' is opposed to 'informal justice', and where there have been few attempts to observe how the merging of different normative reference systems engenders normative syncretisms and forms of negotiated justice. In this article, after examining the key transition points in the legal history of Afghanistan, I will attempt to show that there is an important customary component in the justice's implementation of Kabul's tribunals, its principal aim being to legitimise the work of judges. An analysis of the current situation, informed by ethnographic research conducted in Kabul beginning in 2005, cannot be understood without a historical retrospective that takes account of the important politico-legal changes that have taken place over the past hundred and fifty years, which have been punctuated by multiple reforms and tumultuous regime changes.

Beyond the Frame of Practical Reason: The Indian Evidence Act and Its Performative Life

Ranabir Samaddar

This article is about the Indian Evidence Act. It explains how evidence is the script that carries law's unconscious. One one hand, evidence is the site of reason, and on the other hand it is the performative site of the unconscious. The operation of the Evidence Act requires a court, arguments, ways of producing evidence, counter-arguments, scrutiny of the nature of the evidence submitted, and finally the disputation around what constitutes an evidence – and then the judgement. This article argues, through a brief presentation of the history of the Act, how law in this way combines the normative and the performative – science of inquiry and the unpredictable script of the outcome, procedure and the spectacle built around elements such as live deposition and the hermeneutic power of the image, rational considerations and emotion, virtuality and the event, serious business in the court and the element of drama. The article suggests (with a bit of irony) the injunction that to see what law is and how it functions we can go to the cinema, and to see what cinema is we can go to the court.

How Should the Other be Judged? Justice and Cultural Difference in Criminal Courts

Véronique Bouillier

This paper shows how, in the French Assizes Courts, the accusation of foreign defendants (here, mainly Sri Lankans) and the verbal exchanges with them during their trial reveal the implicit codes and presuppositions that govern the French judiciary system. Through an analysis of the part that the language plays in court, and hence the importance of interpreters, this paper will consider the emotions that are revealed during the trial and the role assigned to 'culture'. It will conclude that the two requirements of equality before the law and of individualization of punishment are often in contradiction.

https://doi.org/10.1177/0392192115600612 Published online by Cambridge University Press

Assessors or Popular Jury? Variations around Citizen Participation in the Chinese Justice System

Bin Li

Citizen participation in Chinese justice may take the shape of assessors sitting alongside professional judges, or, as it is sometimes the case on an experimental basis, of the introduction of a people's jury in local courts. Yet, these forms of participation do not alter the fundamental features of Chinese governance: the lack of legal autonomy of law, and the lack of independence of judges with respect to the political authority. These remain the main obstacles to the extablishment of the rule of law in China. In fact, the changes in the system of assessors and jurors have failed to legitimate the judicial power through participation and transparency. Experience has shown, on the contrary, that assessors and jurors remain fully subordinate to professional judges, who continue to have the controlling hand over the justice system. Nevertheless Chinese citizens, along with the parties involved in trials, are not duped by such arrangements. Once the limits of the practical utility of assessors and jurors becomes apparent, the question of the relationship between the people and judicial authority will inevitably be posed anew. The reply to the question will be even more pressing, since it will no longer be possible to use the same subterfuge. That is why citizen participation in justice is so crucial in a China in search of democracy.

Local Powers and Judicial Constraints in a Case of Rape in India

Daniela Berti

Since independence, the Indian State has shown a voluntarist approach in the judicial domain. This has led to the introduction of severe laws against customary relations of exploitation, harassment, and discrimination that rest on caste, gender, or religious differences. While this policy has enhanced a deeper legal culture, and provoked a new legal activism within the Indian population, it has not extirpated the local relations of dominance and exploitation. This paper provides an ethnographic account of how the rape of a young girl from a lower caste in Himachal Pradesh (Northern India) was dealt with in the judicial domain. It will thus provide an analysis of the interplay between traditional power relations and new forces that oppose those power relations through the rule of law. It will show how this interplay is visible in trial, and how it interferes with criminal procedures followed by the court.

Away from Grass-roots? The Irony of the Chinese Rural Legal Service

Fu Hualing

The paper examines three factors that are driving and constraining the development of rural legal services delivery in China: geographic limitation, professional interest and political intervention. Firstly, regarding geographic limitation: geography matters, and rurality creates natural barriers for rural residents in limiting the access to legal services. There is an inherent spatial inequality for rural population when it comes to the distribution of legal services, and geographic isolation and remoteness nurture a particular type of legal culture among rural residents. Secondly, regarding professional interest: professionalism matters. There are strong ideological and economic forces which pull the

https://doi.org/10.1177/0392192115600612 Published online by Cambridge University Press

rural legal service providers away from their grass-roots. The calling of an emerging legal professionalism (and the related financial incentives) demands a certain degree of legal knowledge and qualification, rules of procedures, code of conduct and regularity in legal practice. In order to survive in an increasingly competitive legal market, rural legal service providers have to run legal practices as a business, considering the 'bottom line' and following the logic of a legal market. Finally, regarding political intervention: politics matters. To overcome geographic barriers and correct market failure, the government would need to step in to provide or supplement legal services in rural areas by introducing a public dimension of legal services. Politics may ameliorate where the legal service market fails.

From Settlement to Divorce: An Islamic Judicial Practice in Burkina Faso

Maud Saint-Lary

Islamic reconciliation spaces in Burkina Faso take a significant place within the plurality of informal agencies of conflict resolution. Yet this place remains barely visible. This article studies the forms of Islamic justice in the country: it shows how the Islamic authorities dealing with the resolution of family conflicts tend to integrate the Islamic norms with local practices and the demands of justiciable persons. In the Sufi rural environment, the concept of *sulufu* expresses the need for a friendly conciliation that diverges from literalistic reading of the Quran. In town, the role of the 'settlement' plays against the proliferation of divorce: while the Islamic elites agree that the divorce is authorized within the Muslim law, in practice they refuse to endorse it. This shows the force of social injunctions in relation to marriage and to the indissolubility of the couple.

'Reconciliation is the Foundation!' Courts of Justice and Unofficial Reconciliation Practices in Algeria and Sudan

Yazid Ben Hounet

This paper analyzes the interrelations of the customary practices of *sulh*, the reconciliation, and the work of courts of justice in Algeria and Sudan. It focuses on the idea that the courts' work partly integrates the tradition of *sulh* – a practice grounded in custom and in Islamic normativities. The plurality of actors as well as of places – the place of the crime, the place of reconciliation, the court of justice – is taken into account to describe the interplay of official law enforcement and customary practices.

The Politics of Custom: Blood Money, Disputes, and Tribal Leadership in Western India

Devika Bordia

In this article I trace the events around a murder case in the regions inhabited by the Bhils in Southern Rajasthan. The manner in which the case is addressed reveals the intersection between panchayat (village councils), police and court practices. The case also demonstrates how everyday legal practices make visible political affiliations, loyalties, and associations among tribal leaders, and reveals shifts that have taken place in the local formations of power and authority.

https://doi.org/10.1177/0392192115600612 Published online by Cambridge University Press

Customary Law in One Area of 20th Century Africa: the Chagga of Kilimanjaro in Tanzania

Sally Falk Moore

The term 'customary law' has many layers of meaning when applied to the African experience. This article gives a vivid example of a practice of the Chagga people of Kilimanjaro which they regard as a matter of custom. But the paper also makes clear that the idea of customary law has had changing significance in the British colonial period, in the post-colonial present, and in anthropological theory. The article presents some of the concepts which the author has found useful in analyzing this complex topic.

https://doi.org/10.1177/0392192115600612 Published online by Cambridge University Press