

Introduction: Developments of Social Private Law in Sweden

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In part two of this volume the social dimension of Scandinavian private law is investigated by some leading Swedish scholars. The section covers a broad range of issues related to the regulation of the fundamental conditions of community life, influencing an individual's position as a social being within the fields of labor law, consumers' law, child law, etc.

The establishment of new branches of law such as child law is analyzed by Mauro Zamboni in the light of the Welfare State's tendency to monopolize the legal discourse for purposes of "social engineering". In his article *The "Social" in Social Law – An Analysis of a Concept in Disguise* he suggests that social law is to be understood as a part of the law with the specific purpose of placing under social control by law different areas of human relations that traditionally have been left to the guardianships of non-legal forms of regulation and control.

Zamboni's view on social private law as the law of modern society is in part challenged, and in part confirmed, by Kent Källström and Bo Wennström. Examining *The Growth of Social Private Law* Källström suggests that the historical roots of contemporary social private law are to be found in medieval Swedish law. He further points to the distinction between distributive and commutative regulations. In contrast to commutative regulations, with a traditionally objective of framing a secure and fair system for the exchange of performances, the distributive regulations have quite another aim. Distributive regulations tend to govern social existence. Traditionally distributive regulations constituted the private law regulatory system's basis with a task to mirror as well as to promote change in the social life. Rules regulating for example the position of children are seen as examples of distributive regulations playing a part in an ongoing legal social engineering.

In the article *From Person to Party* Bo Wennström, however, claims that the fundamental problem of social private law is that it is a part of a private law system in which everything that originates from social distinctions will be repressed and peripheral. As a way of promoting social private law he proposes that social private law should be distinguished as a shift of attitude when

addressing social private law issues, indicating a “bottom up” perspective as opposed of a “top down perspective”.

In accordance with the arguments of Wennström, Källström and Zamboni, Johanna Schiratzki, in the study *Gender in Court – in the Best Interests of the Child?* suggests that the contemporary Swedish child law witnesses a growing awareness of the importance of the parties position in line with the strong tradition of social engineering by legal means. She argues that a growing tendency in court cases concerning custody, residence, and contact is the importance of positionality when parents’ ability to meet the best interests of the child is assessed.

Anna Kaldal and Pernilla Leviner, however, while exploring the balance between children’s rights and parental rights, points to legal vulnerability of children, questioning if the substantive law’s function in enhancing societal responsibility for children. According to their findings it is highly questionable whether the ratification of the UN’s Convention on the Rights of the Child and the emphasize on the principle of the best interest of the child has resulted in a shift of balance between parent and child in applicable Swedish law.

While analyzing the different legal means of protection children from harmful effects of commercialism in the article *Children and Advertising – A Swedish Perspective on the Relevant Legal Arguments* Lena Olsen likewise raises concern for the weak legal position of children, as well as the societal goals of the law. Her research indicates that the invisibility of children in the legal area of advertising and marketing endangers the possibility of protecting children by legal measures.

Societal goals as a characteristic of social private law are further discussed by Catharina Calleman from a perspective of labor law. Calleman discusses how the amount of domestic work required is influenced by legislation on, for example, childcare or schooling or social and health services. The decision about who is to perform the work and on what conditions may be dependent on legislation regarding parental leave, working hours or taxation. Her conclusion is that the market for domestic work could be characterised as a purchaser’s market in which the protection of employee is comparatively weak.

In his contribution Jonas Malmberg explores the development of social private law and labor law from another angle by contrasting it to how Swedish contract law has developed with the sale of goods on the commodity market as its social model. Contrary to Sören Öman in the article *Some Commercial Aspects on Labour Law*, Malmberg underlines the important differences between the ways in which sales of goods and employment relationships are organised, pointing at the characteristic of employment contract such as its long-term, individualistic and dynamic nature. Another difference is that in traditional contract law the parties are assumed to have equal bargaining power, while in labour law the basic assumption stipulates that employees constitute the weaker party and that they are therefore in need of protection.

The protection of financially weaker party to a marriage is the subject of Margareta Brattström’s contribution on *Spouses’ Pension Rights & Financial Settlement in Case of a Divorce*. Brattström researches the development within Swedish pension system to give it more of an insurance character. The trend is from so called defined-benefit pensions to defined-contribution pensions

determined by a person's lifetime earnings. To compensate, Swedes are to higher extent saving up in private pension's schemes. These pension savings could more easily than other savings be exempted from a division of property at divorce. In order to protect a financially weaker party Brattström proposes that society alone should bear the responsibility for those with a low income-related pension.

Ruth Mannelqvist analyses legislation on financial compensation from different perspective when looking at *Compensation for Victims in Public Legislation and as a Civil Right*. Her findings point to cross-effects between the public and private law systems for compensation of crime victims. In that context, the civil right to compensation has become more social.

A concern for the financially weaker party is clearly visible in Annina H. Persson's study on *Over-indebtedness – a Growing Problem*. Her research indicates that the Swedish system of insolvency law is a good deal more creditor-friendly than its Anglo-American counterpart. The Swedish Debt Restructuring Act, for example, could be criticized for penalizing debtors instead of rehabilitating them. As a result only a small proportion of the households in Sweden afflicted with over-indebtedness during the critical years of the 1990s have today found a solution to their problems, e.g. through debt restructuring.

In her contribution *Legal Information Supply and the Digital Divide* Cecilia Magnusson Sjöberg brings some of the core issues of social private law to the era of modern information and communication technology (ICT). Discussing citizens' right of access to legal information as a fundamental aspect of a democratic society she looks into the legal consequences of the digital divide in the well-developed states of Scandinavia.

Obviously, the present volume gives but a taste of the current Swedish debate on social civil law. Important issues still to be explored are for example regulations on social demands and public procurement, including the demands on "public responsibility" from a private entrepreneur undertaking to provide public services. Another important aspect of the social private law regulations is legal procedure as rising attention is given to creating within and outside of court procedural settlement procedures for the purpose of giving the regulations a stronger effect. All in all *Developments of Social Civil Law in Sweden* points in the direction of a broad perspective on law and its function in society, as well as to a need of ongoing creative legal research.