

Redaksioneel

We live in a world which is becoming more and more complex. Modern technology continues to pose new questions to the law, while lawyers and governments are slow to adapt to the new challenges. This, of course, creates vast new fields of research and opens up more traditional fields to new analysis and interpretation. This volume contains a healthy dose of (at least in legal terms) newer topics which still cause much uncertainty and requires further reflection and research. There is also a good measure of traditional topics which suggests that, even after thousands of years of development and debate, the final word will probably never be said on the law relating to these matters. And nor should it. Society is not stagnant – it is in a constant state of flux and therefore the law must inevitably also be fluid.

The Austrian physicist and philosopher Ernst Mach said: “The aim of research is the discovery of the equations which subsist between the elements of phenomena”. Legal research should therefore focus on law as the social equations created to address social phenomena and regulate social relations among people, whether as individuals or collectives. And because law, like society, is always changing, it remains an unfulfilled promise – an empty promise for many who lack the means to make their voices heard, or a broken promise for those whom the law does not or cannot adequately protect.

Since law can never be more than an unfulfilled promise, the notion of perfect law will forever remain an impossible dream. And imperfect law will inevitably result in countless instances where individuals or groups are let down or “slip through the cracks”. Legal research should expose these flawed equations and provide the stimulus for debate on ways and means to address the shortcomings. To do this, researchers must question and challenge existing norms. They must dissect the current legal equations to expose fallacies and incorrect assumptions, to reveal flawed, invalid or outdated arguments and come up with improved equations.

Maar navorsing moet ook daarop wys dat die reg alleen nie alle sosiale probleme die hoof kan bied nie. Dit wil tans voorkom of daar wêreldwyd 'n tendens bestaan dat veral politici, maar ook ander sosiale rolspelers, die beskouing huldig dat daar kitsoplossings vir sosiale probleme geskep kan word bloot deur die reg te wysig of nuwe wetgewing uit te vaardig. Dit is 'n gevaarlike tendens wat enersyds lei tot die uitvaardiging van 'n oorvloed wetgewing wat uiteindelik onhanteerbaar word en nie doeltreffend afgedwing kan word nie. En wanneer bestaande regsreëls nie doeltreffend afgedwing word nie, vervul die samelewing andersyds in 'n staat van toenemende wetteloosheid. Die feit dat minder as 20% van verkeersboetes in Suid-Afrika betaal of gevorder word en die miljarde Rande aan onbetaalde munisipale rekeninge, is skreiende voorbeelde hiervan. Die reg bied bloot die meganisme waarmee sosiale verhoudings gereël kan word, maar geen oorvloed van regsreëls kan hoegenaamd 'n

verskil maak sonder dat daardie regsreëls doeltreffend toegepas en afgedwing word nie.

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