

2014

Law Abstracts

Eleventh Annual International
Conference on Law
14-17 July 2014, Athens, Greece

Edited by Gregory T. Papanikos

THE ATHENS INSTITUTE FOR EDUCATION AND RESEARCH



Law Abstracts
11th Annual International
Conference on Law
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Preface

This abstract book includes all the abstracts of the papers presented at the *11th Annual International Conference on Law, 14-17 July 2014*, organized by the Athens Institute for Education and Research. In total there were 52 papers and 53 presenters, coming from 25 different countries (Australia, Brazil, Canada, China, Colombia, Croatia, Germany, Hungary, India, Ireland, Israel, Italy, Latvia, Nigeria, Palestine, Poland, Portugal, Republic of South Africa, Romania, Saudi Arabia, South Africa, Spain, Sweden, UK, USA). The conference was organized into XIII sessions that included areas such as International Law, Family Law, Legal Education, Rights e.t.c As it is the publication policy of the Institute, the papers presented in this conference will be considered for publication in one of the books of ATINER.

The Institute was established in 1995 as an independent academic organization with the mission to become a forum where academics and researchers from all over the world could meet in Athens and exchange ideas on their research and consider the future developments of their fields of study. Our mission is to make ATHENS a place where academics and researchers from all over the world meet to discuss the developments of their discipline and present their work. To serve this purpose, conferences are organized along the lines of well established and well defined scientific disciplines. In addition, interdisciplinary conferences are also organized because they serve the mission statement of the Institute. Since 1995, ATINER has organized more than 150 international conferences and has published over 100 books. Academically, the Institute is organized into four research divisions and nineteen research units. Each research unit organizes at least one annual conference and undertakes various small and large research projects.

I would like to thank all the participants, the members of the organizing and academic committee and most importantly the administration staff of ATINER for putting this conference together.

Gregory T. Papanikos
President

FINAL CONFERENCE PROGRAM
11th Annual International Conference on Law
14-17 July 2014

C O N F E R E N C E P R O G R A M

(The time for each session includes at least 10 minutes coffee break)

Monday 14 July 2014

08:00-08:30 Registration

08:30-09:00 Welcome and Opening Remarks

- Dr. Gregory T. Papanikos, President, ATINER.
- Dr. David A. Frenkel, Head, Law Research Unit, ATINER & Professor, Ben-Gurion University, Beer-Sheva, Israel.
- Dr. Michael P. Malloy, Distinguished Professor & Scholar, University of the Pacific, USA & Academic Member, ATINER.

09:00-11:00 Session I (Room A): Law and History I

Chair: Michael P. Malloy, Director, Business and Law Research Unit, ATINER & Distinguished Professor, University of the Pacific, USA.

1. Valdis Bluzma, Professor, University Turiba, Latvia. The Impact of Western Legal Culture on the Formation of Latvian Legal System before Establishing of the Latvian Statehood (XIII - early XX century). (Law & History)
2. Mark Barr, Associate Professor, Saint Mary's University, Canada. Performing Mercy: Pardon and Transportation in the Poetry of Samuel Taylor Coleridge.
3. *Gerard Coffey, Lecturer, Limerick University, Ireland. The Anglo-American Development of the Double Jeopardy Principle: Post-Medieval Period.
4. Corinna Coors, Senior Lecturer, University of West London, UK. Is the UK Heading towards Protection of Image Rights? (Law & History).
5. Nina Christiane Lueck, DAAD (German Academic Exchange Service) - Lecturer in Law, University of Sheffield, UK. The Golden Rule in the Course of Time: Charitable Foundations in England, Germany and the EU Philanthropic Governance Perspective - of Altruism and Calculation. (Law & History)

<p>11:00-12:30 Session II (Room A): International Law I Chair: Gerard Coffey, Lecturer, Limerick University, Ireland.</p>	<p>11:00-12:30 Session III (Room B): Economy and Commerce I Chair: Corinna Coors, Senior Lecturer, University of West London, UK.</p>
<ol style="list-style-type: none"> 1. Nadia Ramzy, PhD Candidate, University of Manchester, UK. The Interpretation of International Arbitration Agreements: Are Specific Interpretation Policies Required? 2. *Dwarakanath Sripathi, Professor, Osmania University, India. Minority Rights Protection in India and Greece - A Comparative Study of Recent Developments. 3. Maria Carolina Romero Lares, Associate Professor, World Maritime University, Sweden. The Right of Protest At Sea, Flag State Versus Coastal State. 4. Maja Zajac, Ph.D. Student, University of Wroclaw, Poland. Legal Regime of Shipwrecks - Private Property, State Ownership or Underwater Cultural Heritage? 	<ol style="list-style-type: none"> 1. Brian McCall, Orpha and Maurice Merrill Professor in Law, University of Oklahoma College of Law, USA. Gambling on Our Financial Future: How the Federal Government Fiddles While State Common Law is a Safer Bet to Prevent another Financial Collapse. 2. Elizabeth Snyman-Van Deventer, Professor/ Head, University of the Free State, South Africa. A South African Legal Perspective on Gambling and Dog Racing. 3. Maria Luisa Chiarella, Researcher, University Magna Graecia of Catanzaro, Italy. Consumer Right to Withdrawal: Towards an Implementation of Consumer Protection. 4. Howard Chitimira, Lecturer, North-West University, South Africa. Aspects of the Regulation and Enforcement of Market Abuse Prohibition in South Africa. Aspects of the Regulation and Enforcement of Market Abuse Prohibition in South Africa. 5. *Elfriede Sangkuhl, Lecturer, University of Western Sydney, Australia. How the Macroeconomic Theories of Keynes Influenced the Development of Taxation Policy after the Great Depression of the 1930's.

<p>12:30-14:00 Session IV (Room A): Constitutional and Administrative Law I Chair: Dwarakanath Sripathi, Professor, Osmania University, India.</p>	<p>12:30-14:00 Session V (Room B): Economy and Commerce II Chair: Elfriede Sangkuhl, Lecturer, University of Western Sydney, Australia.</p>
<ol style="list-style-type: none"> 1. *Jorge Emilio Nunez, Lecturer, Manchester Metropolitan University, UK. Sovereignty Conflicts as a Distribute Justice Issue. 2. Athanasios Mihalakas, Assistant Professor, State University of New York, USA. The Evolution of Federalism in the US. 3. *Cristina Cojocaru, Junior Lecturer, Academy of Economic Studies in Bucharest, Romania. Romanian Constitutional Jurisdiction. Suspension and Impeachment of the President. 4. Sanaa Alsarghali, Ph.D. Candidate, Lancaster University, Palestine. Once Powers are Concentrated They are Likely to remain so: an Analysis of the Palestinian Basic Law in Lights of 2003 Amendments. 	<ol style="list-style-type: none"> 1. Nicolette Butler, Lecturer, University of Manchester, UK. The Settlement of International Investment Disputes: Increasing the Role of the International Court of Justice. (Monday, 14 of July). 2. Georgios Zouridakis, Doctoral Student, Essex University, UK. Contractual Freedom and the Corporate Constitution; a Study on Where Greek Law Stands in a Comparative Context and the Way Forward. 3. Ozgur Arikan, Ph.D. Candidate, The University of Manchester, UK. Modern Functions of Trademark and Parallel Importation.

14:00-15:00 Lunch

<p>15:00-16:30 Session VI (Room A): Family Law Chair: Athanasios Mihalakas, Assistant Professor, State University of New York, USA.</p>
<ol style="list-style-type: none"> 1. Lynda Black, Assistant Professor, University of Memphis, USA. The Birth of a Parent: Defining Parentage for Lenders of Genetic Material. 2. Rika Van Zyl, Lecturer, University of the Free State, South Africa. Problems with the Application of the Inter Vivos Trust in South Africa. 3. *Claudia Ribeiro Pereira Nunes, Research/Extension Director, Community College of Rondonia, Brazil. Have "Special Poverty Families" been Granted Adequate Food Right in Legal Amazon Region?

4. Bradley Smith, Associate Professor, University of the Free State, South Africa. South African Cohabitees and the Right to Inherit Intestate.
5. James Faber, Lecturer, University of the Free State, South Africa. The 'Rescuing' of Lost Wills: a South African Perspective.
6. Carol Chi Ngang, Academic Associate, University of Pretoria, South Africa. Reflections on the Realisation of the Right to Development within the Framework of International Cooperation

**21:00-23:00 Greek Night and Dinner (Details during registration)
Tuesday 15 July 2014**

08:00-09:30 Session VIII (Room A): Rights II

Chair: Ivan Kosnica, Assistant Professor, University of Zagreb, Croatia.

1. Paola Chiarella, Researcher, University Magna Graecia of Catanzaro, Italy. Euthanasia: A Modern Variant of Justice. The Rights on Body in Time of Disease.
2. *Matthew Lewans, Associate Professor, University of Alberta, Canada. Pragmatism and Judicial Restraint.
3. Alice Diver, Lecturer, University of Ulster, Ireland. 'Bedroom Tax' or Rights Violation: Can the European Convention Protect Individuals' Property Rights Against Welfare Reforms?
4. David Holmes, Lecturer, University of New South Wales, Australia. 'The Other Man on the Podium': The Case of Peter Norman and the Rights of Athletes.
5. Clement Marumoagae, Lecturer, North West University, South Africa. South African Law regarding Employees Resignation due to Employers Conduct.

**09:30-11:00 Session IX (Room A):
Law and History II**

Chair: Norbert Varga, Associate Professor, University of Szeged, Hungary.

1. Jennifer Bard, Professor, Texas Tech University, USA. Legal and Ethical Issues in Conducting Human Subject Research outside the Borders of One's Own Country.
2. *Norbert Varga, Associate Professor, University of Szeged, Hungary. Citizenship and Civil Procedure Law (Act I of 1911) in Hungary. (Law & History).

**09:30-11:00 Session X (Room B):
Economy and Commerce III**

Chair: Guofu Liu, Associate Professor, Beijing Institute of Technology, China.

1. *Michael Malloy, Distinguished Professor, University of the Pacific, USA. There are no Bitcoins, Only Bit Payers: Law, Policy and Socio-Economics of Virtual Currencies.
2. Lisa Tripp, Associate Professor, Atlanta's John Marshall Law School, USA. Lessons for an Independent Scotland from Greece's Euro Tragedy.

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| <ol style="list-style-type: none">3. *Guy Lurie, Post-Doctoral Fellow, the University of Haifa, Israel. Medieval Emergencies and the Contemporary Debate.4. *Ivan Kosnica, Assistant Professor, University of Zagreb, Croatia. Hungarians and Citizenship in Croatia-Slavonia 1868-1918. | <ol style="list-style-type: none">3. J. Joel Baloyi, Senior Lecturer, University of South Africa, Republic of South Africa. The Gremlin of Needle-Time "Rights" in South Africa: The Injustice of Poorly-Conceived Legislative Regulation.4. *Cosmas Anyakudo, Research Associate, Brunel University, UK. Finding the Middle Ground between Legal Mandation of Corporate Social Responsibility and Free Market Economy Considerations in Emerging Economies; a Case Study of the Nigerian Experience.5. Dima Basma, Student, University of Manchester, UK. Rethinking the Rationale; The Value of Trademarks and the Role of Consumers. |
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11:00-12:30 Session XI (Room A): Legal Education

Chair: Jorge Emilio Nunez, Lecturer, Manchester Metropolitan University, UK.

1. Valerie Epps, Professor, Suffolk University, USA. Civilian Casualties in Modern Warfare: The Death of the Collateral Damage Rule.
2. Blanca Torrubia Chalmeta, Director, University Master in Advocacy, Spain & Ana Maria Delgado Garcia, Director, University Master in Taxation, Spain. The Virtual Teaching System.
3. *Thomas P. Corbin, Assistant Professor, Prince Mohammed Bin Fahd University, Saudi Arabia. Rule of Law Perceptions of Gulf Cooperative Council (GCC) Graduating Law Students.
4. *Anna Chronopoulou, Birkbeck College London, UK. From a Professional Tribe to a Business Neo-Tribe: Towards a Theory of Consumer-based Lifestyles in the Legal Profession.

12:30-13:30 Lunch

13:30-15:00 Session XII (Room A): Constitutional and Administrative Law II

Chair: Thomas P. Corbin, Assistant Professor, Prince Mohammed Bin Fahd University, Saudi Arabia.

1. Mark Dawson, Professor, Hertie School of Governance, Germany. Constitutional Balance in the European Union after the Euro Crisis. (Tuesday, 15 of July).
2. *Guofu Liu, Associate Professor, Beijing Institute of Technology, China. Prospect of Policy of Foreigners of Chinese Origin and Chinese Citizens Who Reside in Foreign Country: From the Perspective of Mass Influx.
3. Susana Sousa Machado, Lecturer, ESTGF- Polytechnic Institute of Porto, Portugal. Reflections on Freedom of Religion in the Workplace: Conflicts and Reasonable Accommodation.
4. Eric Leiva Ramirez, Teacher, La Gran Colombia University, Colombia. The Phenomenon of State Responsibility for Acts Caused for the Legislator.

15:00-16:30 Session XIII (Room A): International Law II

Chair: David A. Frenkel, Head, Law Research Unit, ATINER & Professor, Ben-Gurion University, Beer-Sheva, Israel.

1. Pierre Thielborger, Professor, Ruhr University Bochum, Germany. Three Conceptualizations of the Right to Water in International Law. (Tuesday, 15 of July)
2. Ahmad Almaududy Amri, Ph.D. Candidate, University of Wollongong, Australia. Legal Measures in Combating People Smuggling: Responses in Southeast Asia.
3. *Christoforos Ioannidis, Ph.D. Student, King's College London, UK. Are the Conditions of Statehood Sufficient? An Argument in Favour of Popular Sovereignty as an Additional Requirement for Statehood, on the Grounds of Justice as a Moral Foundation of International Law.

17:30-20:30 Urban Walk (Details during registration)

21:00- 22:00 Dinner (Details during registration)

Wednesday 16 July 2013

Cruise: (Details during registration)

Thursday 17 July 2013

Delphi Visit: (Details during registration)

Sanaa Alsarghali

Ph.D. Candidate, Lancaster University, Palestine

Once Powers are Concentrated They are Likely to remain so: An Analysis of the Palestinian Basic Law in Lights of 2003 Amendments

Palestine faces a double transition: transition towards democracy and transition towards statehood. Therefore, the Palestinian political system has been a source of debate for some time. Palestinians were criticized for having created a powerful president without providing effective checks and balances upon that power in their own constitutional document. The problem of concentration of powers is not new to Palestinians who used to be governed by constitutional documents, most of which did not reflect the will of the people and provided for this structure. However, after the establishment of the Palestinian Authority (PA) and the signing of the so-called Oslo Accords, The Palestinian Basic Law (BL) was drafted by the elected Palestinian Legislative Council (PLC) in 1997. The law, which took five years to be approved by the Palestinian President and the Palestinian Liberation Organization (PLO) chairman Mr. Arafat, was considered one of the most well drafted constitutions in the Arab World. However, the amendments that were essentially imposed upon the Palestinians by the Road Map agreement in 2003 divided the power of the Executive branch between the president and a Prime Minister leaving a hybrid political system that favored the president and left an unclear political path. The paper is interested in analyzing the Palestinian Political system after the amendments of 2003. It argues that the current semi-presidential system drives the PA into a political deadlock. Thus, it will start by presenting the semi-presidential system in theory and its main subtypes that France and Germany experienced. Then, it will present the Palestinian political system that the BL created in 2003; and the rationale behind this adoption. Finally, it will try to show that the practical and theoretical constitutional challenges faced by the semi-presidential system subtypes have been repeated in the Palestinian situation.

Ahmad Almaududy Amri

Ph.D. Candidate, University of Wollongong, Australia

Legal Measures in Combating People Smuggling: Responses in Southeast Asia

People smuggling constitutes a threat to maritime security. Indeed, this issue has become one of the main concerns of the international community, as people smuggling not only affects countries of origin and destination, but also transit states. According to the British Home Office, around 30 million people are smuggled every year all over the world. A vast amount of money is also received by smugglers in return. Its perilous nature which often endangers people's life has also placed people smuggling as one of the threats to maritime security in the Southeast Asia region. Therefore this issue should continuously be heeded and further measures should also be taken in order to solve the problem.

People smuggling has also been considered as a current fastest growing transnational crime. It involves a myriad number of countries as well as numerous routes which continuously growing over time. This is possible is also due to the fact that the developments of technologies have helped the smugglers to conduct their activities such as the use of complex navigational equipment. It is believed that the number of illegal migrants via land, sea and air are around 30-40 million out of approximately 191 million migrants worldwide. This figure accounts 15-20% of the world's immigration activities

States have taken measures to combat people smuggling at the multilateral and regional level. At the multilateral, people smuggling is considered as an offence pursuant to the Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling Protocol) which is attached to the United Nations Convention on Transnational Organized Crime (CATOC). At the regional level, the Bali Process has been one of the most important forums in addressing the issue of people smuggling.

This paper attempts to pull out different legal frameworks at both international and regional level in order address the current legal measures in combating people smuggling. Furthermore, challenges in its implementation as well as its adequacy will also be discussed.

Cosmas Anyakudo

Research Associate, Brunel University, UK

Finding the Middle Ground between Legal Mandation of Corporate Social Responsibility and Free Market Economy Considerations in Emerging Economies; a Case Study of the Nigerian Experience

As the world reels under the impact of the global meltdown caused by corporate collapses since the turn of the 21st century, all facets of the international community are seeking lasting solutions to this problem of a cyclical nature. In most of the discussions on how to stabilize the international economic and financial environment, a recurring theme is the debate on the sufficiency of existing corporate self-regulatory mechanisms. Despite the stoic position of proponents of free market economy, the clamour for state intervention cannot be ignored. The reason behind the vociferation for state regulation of corporations is clear; transnational corporations impact the human and physical environment in diverse ways such as unemployment, environmental degradation and financial meltdown. Apart from obvious general negative economic impact on citizens, the brunt of global corporate collapses and financial meltdowns is usually borne by national governments who are required to put rectification measures in place to “bail out” their citizens. Invariably, corporations get help from the state; their survival being crucial to job availability and economic development. The extent of intrusion by governments and their agencies is the subject of this paper. What is the middle line to toe for achieving the equilibrium required for a stable and sustainable economic development? In emerging, the need is to balance the irrevocable values of established globalised capitalism and mitigating the chekered consequences of corporate activities. Nigeria is an emerging economy that is responding to the challenging issue of the contemporary global downturn by institutionalising various reforms and seeking legislation aimed at promoting development by legislating on corporate social responsibility. This is amidst the flurry of activities by governmental and non-governmental international organisations and agencies that are churning out new or improved regulatory codes for corporations. In the cacophony of influences, how is the way forward decipherable?

Ozgur Arikan

.D. Candidate, The University of Manchester, UK

Modern Functions of Trademark and Parallel Importation

A trademark signifies the commercial origin or quality characteristics of the products bearing it. A trademark also can signify a brand image that may cover a range of themes such as luxury, exclusivity, quality, beauty and youth or other desired attitudes or lifestyles that consumers might wish to be associated with. Trademark owners can invest in the creation and development of brand images to be associated with their trademarks through advertising and other marketing techniques in order to attract consumers to their trademarked products. In order to safeguard the investment that trademark owners make to create their brand images, trade mark law gives trademark owners protection under Article 5 (1) (a) of the Trade Mark Directive. This Article and its interpretation has been expanded recently through the judgments of the Court of Justice of the European Union ("CJEU"), in cases such as L'Oreal and Interflora, to cover the communication, advertising or investment functions (the modern functions) of trademark.

On the other hand, the free movements of goods principle of the EU, which aims to integrate the economies of member states, requires that traders should be free to move their good traders within the European Economic Area ("EEA"). Therefore, the rights of trademark owners are exhausted in relation to the products which have been put on the market under the trademark within the EEA by the owner or with his/her consent. This exhaustion rule does not apply in situations where trademark owners have legitimate reasons for opposing further commercialization of the products in order to safeguard the essential function of their trademark. The question which my paper will try to address is whether the function that trademark owners need to safeguard in the context of parallel importation should be limited to the essential function of trademark or extended to include the more recently recognized modern functions.

J. Joel Baloyi

Senior Lecturer, University of South Africa, Republic of South Africa

The Gremlin of Needle-Time "Rights" in South Africa: The Injustice of Poorly-Conceived Legislative Regulation

Collecting societies, also known as collective management organisations (CMOs), have been credited with being the custodians of the rights and interests of authors and other rightsholders, many of whom are often vulnerable without such custodianship. Collecting societies do this by taking away from rightsholders the anxiety of having to license their works to multiple users, to monitor the usages of the works and to collect licence fees from such users. Through a system of reciprocal representation, collecting societies further ensure that rightsholders benefit optimally from the principle of national treatment embodied in the Berne Convention and other international treaties, by creating a system where each society can ensure, in its own territory, the protection of the rights entrusted to other societies.

Given the important role that CMOs play, the question has often arisen as to whether, and if so how, CMOs should be regulated, with some advocating for self-regulation while many governments feel justified to rein in the activities of the CMOs through a system of mandatory regulation. In Africa, where in many cases CMOs may provide the only source of royalty income for rightsholders, an effective CMO system can spell the difference between starvation and wellbeing for rightsholders. It appears however that the attempt to regulate CMOs in Africa has yielded more confusion than positive outcomes, often gravitating into fierce, courtroom battles between the regulator and the CMOs. This paper seeks to recount experiences in CMO regulation in Nigeria, Kenya and South Africa, and to glean lessons that can be learnt with regard to proper regulation of CMOs to ensure their maximum effectiveness.

Jennifer Bard

Professor, Texas Tech University, USA

Legal and Ethical Issues in Conducting Human Subject Research outside the Borders of One's Own Country.

By some estimates up to 80% of clinical drug trialsHelp, Harm and Human Subjects » American Scientist take place outside of the country where the investigators or sponsor is based. Often the country is one with regulations that provide less protection than would be available at home. Regardless of the home country and the host country, this dichotomy between the extent to which human subjects of research are protected by laws intended to foster informed consent, balanced risk to benefit to the subject, and special provision for vulnerable populations raises difficult legal and ethical questions. Legally, the issues are one of jurisdiction as well as managing conflicts of law. Ethically, researchers must consider whether they are taking advantage of a population with less information than their friend and neighbors.

The topic has many layers of complexity – not least of which the variety of reasons for doing research overseas. Is the condition or disease one endemic to specific geographic areas? Or is taking the study overseas done for reasons of convenience or economy?

Organizations like the:

1. International Committee of the Red Cross (ICRC): www.icrc.org
2. Office of the United Nations High Commissioner for Human Rights (OHCHR): <http://www.ohchr.org/english/>
3. World Health Organization (WHO): <http://www.who.int/en/>
4. Council for International Organizations of Medical Sciences (CIOMS): <http://www.cioms.ch/>
5. United Nations Educational, Scientific, and Cultural Organization, Bioethics Program (UNESCO): http://portal.unesco.org/shs/en/ev.php-URL_ID=1372&URL_DO=DO_TOPIC&URL_SECTION=201.html
6. UNAIDS: <http://www.unaids.org/en/default.asp>
7. World Medical Association (WMA): <http://www.wma.net/e/>

Are all involved in setting up workable systems that respect both human rights and individual freedom. Yet despite these efforts and the signing of many treaties and declarations, such as the Declaration of Helsinki, we are no closer to a good solution.

Individual countries and confederations of countries have had little success in breaking through the inherent social inequalities and power status of countries with vastly different resources. The United States,

for example, has rejected proposals to require that pharmaceuticals sold in the United States be subject to a uniform standard of human trial regulation—regardless of where those trials are conducted. This paper considers the role lawyers can play in their own countries to assure that all human subjects of research have the basic protections of voluntary participation, separation between clinical medicine and research, and assumption of no more than reasonable risk.

Mark Barr

Associate Professor, Saint Mary's University, Canada

Performing Mercy: Pardon and Transportation in the Poetry of Samuel Taylor Coleridge

I will argue that a selection of Samuel Taylor Coleridge's early poetry, including "This Lime Tree Bower my Prison," "The Dungeon," and "The Foster Mother's Tale," form a complex mediation on the efficacy and justice of punishment, specifically championing the salutary effects of transportation (physical and literary) over the manifestation of state tyranny that was seen as the penitentiary system. Written after the 1794 Parliamentary grant to Jeremy Bentham for construction of his panoptic prison and in the aftermath of a series of English and Scottish treason trials which resulted in the transportation of many leading radical figures, these poems suggest that lyric can perform a just mode of punishment analogous to transportation, creating a space supposedly immune from direct state control in which the individual (under the benign auspices of nature) can reform himself. Although such an ideal seemingly ignored the reality of life in New South Wales (as was later revealed in Capt. Alexander Maconochie's *Report on the State of Prison Discipline in Van Diemen's Land*), Coleridge's proposal that transportation and reform may happen domestically, anywhere nature and poetry are experienced, implies that literature is a manifestation of liberty and justice capable of outperforming law. However, I shall suggest that this putative expression of a freedom associated with the ancient English Constitution actually speaks to the rhetorical nature of mercy itself in the 18th Century pardon process and the modern Restorative Justice Movement: like lyric, both systems require that outward signs which (supposedly) reflect inner states be publically manifested according to certain generic conventions. Through examining both archival records of petitions for pardon and modern accounts of Restorative Justice in Canada, I will suggest that Coleridge's poetry presents a case for mercy arising through performance, that the breaking of law through "criminal equity" or mercy is not so much a manifestation of "ancient liberty" as a lyrical ritual the success of which relies on adherence to conventions as rigid as any legal system.

Dima Basma

Student, University of Manchester, UK

Rethinking the Rationale; The Value of Trademarks and the Role of Consumers

Traditionally, a trademark's significance stemmed from its ability to relay signals about the quality of the products associated with it, thus reducing consumer search costs. However, With the evolution of a consumer society, the development of new marketing techniques and the widening reach of the internet, trademarks now act as vehicles for communication of functional messages, 'value propositions', 'images' and 'associations'. This view, have been reflected in European law which now incorporates a brand dimension in trademark protection. In *L'Oreal v Bellure*, it was ruled that even exploitation of the 'brand allure' could amount to infringement, thus, setting a high threshold for owners protection.

Whilst the courts correctly recognise that a trademark has significant communicative value, its current rulings reflect a view in which only the trademark owner's investment in the mark is acknowledged, overlooking the contribution of consumers in increasing the trademark's communicative value. This protectionist view, which prioritises trademark owners' interests, is potentially stifling for a competitive market.

This paper questions whether the ability of a trademark to convey both functional and non-functional messages should remain solely attributed to the investments which trademark owners make in their marks, ignoring the added value that consumers contribute to the trademark. By acknowledging the consumer in the creation of the trademark value, an argument for the subsequent allocation of protective rights may shift, from exclusively owner-oriented, to one that affords less protection to the trademark owner.

This paper will attempt to determine the CJEU's interpretation of the communicative function of a trademark. Subsequently, the paper will review existing brand literature to see how it may inform the role consumer's play in brand development.

Lynda Black

Professor, University of Memphis, USA

Birth of a Parent: Defining Parentage for Lenders of Genetic Material

With the advances in assisted reproductive technology, the scholarly quest for an all-inclusive legal definition of parentage has proliferated. All too often this quest becomes muddled in Constitutional tangles, in shifting mores, in quagmires of evolving and inconsistent legal parameters on what constitutes a “family”, and in the perceived need to reconcile conflicting state laws governing marriage, adoption and surrogacy contracts. This article suggests a return to the basics. Parents are born with the birth of a child. Notwithstanding the scientific breakthroughs in reproductive technology and the more inclusive modern understanding of the family unit, every child begins with two (and only two) suppliers of genetic material and one (and only one) gestational carrier. Thus, the only logically clear starting point for a legal definition of parentage begins with these three claim-holders to parentage. Once the examination of the concept of parentage is disentangled from the complications of related, but logically independent, legal questions, it becomes clear that unless and until the rights and obligations of parentage are either (voluntarily) contractually waived or (involuntarily) judicially or statutorily terminated, the law must recognize as parent any individual (regardless of his or her gender, sexual orientation or marital status) who is biologically related to a child.

Valdis Bluzma

Professor, University Turība, Latvia

The Impact of Western Legal Culture on the Formation of Latvian Legal System before Establishing of the Latvian Statehood (XIII - Early XX Century)

The objective of the paper is characterising the exclusive historical influence of law and legal thought of Western European states on formation of Latvian legal system. The paper is based on author's long term researches in legal history of Latvia. He was director and one of the authors of the project of book „Legal history of Latvia (1914 - 2000)“ (Latvijas tiesību vēsture (1914 - 2000). Rīga, 2000), director, editor and co-author of the project of book „The Legal Sources of Latvia. Texts and Commentaries. Vol. 2. The Legal Sources of Polish and Swedish times (1561 - 1796)“ (Latvijas tiesību avoti. Teksti un komentāri. 2.sej. Poļu un zviedru laiku tiesību avoti. Rīga, 2006) and now he has prepared for publication (planned in 2014) monography „Legal History of Latvia from Ancient Times till 1914“ (Latvijas tiesību vēsture no seniem laikiem līdz 1914). Issues and subjects discussed in this oncoming monography are published in several articles of Latvian journals as „Latvijas Vēsture“ (History of Latvia) and „Jurista Vārds“ (Word of Lawyer), and presented in some Latvian conferences.

The actuality of theme is determined by fact that Latvian legal history is little known outside the borders of the Baltic States. An exception is some researches of the modern German historians because the Latvian legal history before establishing of national state since the XIII century largely developed under the influence of German law and German legal thinking, including the reception of Roman law in XV century. The political changes in the Latvian territory gave here dominance for different regional powers and so there was later impact of Lithuanian, Polish, Swedish and Russian law, yet they did not replace, but complemented Baltic German legal heritage.

Author defends thesis that law in pre - statehood period of Latvia corresponded to level of law development in Western Europe. In some periods it was even in vanguard position because of impact of law of progressive powers on territory of Latvia.

Nicolette Butler

Lecturer, University of Manchester, UK

The Settlement of International Investment Disputes: Increasing the Role of the International Court of Justice

Arbitration is the most popular dispute settlement mechanism for the resolution of international investment disputes. However, in recent years there has been a backlash against investment arbitration. Academics and practitioners alike have criticised investment arbitration for its inconsistency, finality and over confidentiality. At the same time, there has also been a shift in the types of issues being dealt with in investment disputes. Previously, investment disputes hinged on very narrow, technical contractual issues which had little effect outside of the particular dispute within which they arose. Nowadays, these private arbitral tribunals are often asked to pronounce on complicated and important public international law issues, for example, human rights and environmental protection policies of investment host states.

In light of these developments, this paper will argue that arbitration may no longer be the most appropriate mechanism for the settlement of international investment disputes. It will be suggested that the International Court of Justice (ICJ) could, and should take on a more central role in the resolution of investment related disputes.

The ICJ has previously been involved in the settlement of a handful of investment disputes. This paper will examine the ICJ's reluctance to involve itself in such disputes in the past, and suggest that it is high time for the world court to step up to the plate.

Maria Luisa Chiarella

Researcher, University Magna Graecia of Catanzaro, Italy

Consumer Right to Withdrawal: Towards an Implementation of Consumer Protection

In European legislation, consumer is defined as “any natural person who is acting for purposes which are outside his trade, business or profession” (art. 2, lett. *b*, Dir. 93/13/EC) and consumer protection has a big importance in accordance to the goals of common market regulation. Among the several instruments introduced by European legislator, we find the right to withdrawal (“*ius poenitendi*”) which applies in particular contracts. It is the right to cancel the contract for any reason and without penalty. Consumers have withdrawal right in distance contracts, doorstep selling, timeshare and even in insurance or banking contracts, just to recall the most known cases. The right to withdrawal can be used during a space of time called “cooling off period”, during this time, in fact, consumer is given the chance to decide and change his mind about the contract. In this research, I investigate if this kind of protection is suitable to offer a complete and satisfactory safeguard to consumers towards professional parties. In many ways, in fact, it would be appropriate to extend withdrawal right also for case in which it is not foreseen by law, in which, nevertheless, it’s necessary to implement consumer defence. This may be the case of contract with unfair terms, in which consumer is not given the chance to cancel the contract but only to ask judicially to void unfair clause.

Paola Chiarella

Researcher, University Magna Graecia of Catanzaro, Italy

Euthanasia: A Modern Variant of Justice. The Rights on Body in Time of Disease

Euthanasia is the bioethical issue that currently calls for an urgent moral and legal reflection. It is, in fact, a modern variant of the classic theme of justice. What answer ought the legal system give to the seriously or terminally ill that ask to die? Very often euthanasia is misinterpreted as an issue of mercy. It is instead a matter of rights and justice. Taking seriously the possibility of our death is not of course, an easy choice. Under normal conditions of health we are reluctant even to imagine that what we are will be deleted as an inscription on the shore of the sea by the *last wave* of our breath.

On the contrary it is completely different the perception of death by those who have lost a good health condition for serious illness or injury. For them, in the saddest cases, self-determination and the sense of dignity can be memories of the past and the thought of death is revealed as the end of torments. In these cases, the legal systems have to wonder about the possibility to apply self-determination even for euthanasia, since they recognize it yet in many other aspects of living. Can we choose to die in these terrible situations or the *when* and the *how* of our death should depend on nature? To replay properly to this question it is necessary to understand what is natural about living. A life without the possibility to write a biography and that depends completely on the help of the others, even for the simplest gestures such as wiping a tear, seems to have lost the sense of gratitude for the gift of another day and it appears, for this reason, unnatural.

The aim of this paper is to search good reasons to support the idea that self-determination should apply also for the decision concerning death.

Howard Chitimira

Lecturer, North-West University, South Africa

**Aspects of the Regulation and Enforcement of
Market Abuse Prohibition in South Africa. Aspects
of the Regulation and Enforcement of Market
Abuse Prohibition in South Africa**

This paper discusses selected aspects on the regulation and enforcement of the market abuse prohibition in South Africa under the Financial Markets Act 19 of 2012. This is done to examine the adequacy of the current regulatory and enforcement framework as regards to the curbing of market abuse practices in the South African financial markets. To this end, the paper provides an overview analysis of the market abuse (insider trading and market manipulation) offences as well as the penalties and other anti-market abuse enforcement approaches that are re-introduced and employed under the Financial Markets Act 19 of 2012. In addition, where possible, the paper also provides a comparative analysis of these offences, penalties and other anti-market abuse enforcement approaches and those that were provided under the Securities Services Act 36 of 2004. This is generally aimed at exposing the existing flaws and/or challenges, and to investigate whether the re-introduced and current anti-market abuse regulatory and enforcement framework in South Africa has now adequately resolved the challenges and/or flaws that were associated with a similar framework under the Securities Services Act 36 of 2004.

Gerard Coffey

Lecturer, Limerick University, Ireland

The Anglo-American Development of the Double Jeopardy Principle: Post- Medieval Period

This paper concerns the evolution (of the interpretation) of constitutional rights, considering the relevance of human dignity, solidarity and equality in private law debate and, in particular, the relationships between person and economic rights on the basis of international Conventions and Declarations of rights. Recent theories (Peces Barba, Ferrajoli) maintain that “fundamental” means “universal”, while rights which tend to exclude, such as property, are not fundamental, since, differently from liberty rights, they don’t have any universal application (they are not referred to everybody in general). On the contrary, social rights are universal rights since they can belong to each individual, without difference of any kind. This enquire has a particular significance in Italian law, considering that Italian Constitution regulates property and economic liberty in Part IV (“Rapporti economici”), rather than in Part I “Principi fondamentali”. This may mean a different importance of these rights in comparison to fundamental rights *tout court* (expressly protected by art. 2 of Italian Constitution). It’s also interesting to consider the “non pecuniary” damages that European Courts acknowledge to individuals in case of illegitimate expropriation of private property; evaluating these issues, it’s possible to investigate about the existence of a fundamental/human core in property rights. The research aims to analyse legal scholar and judicial debate concerning fundamental rights according to the concept of multi-level citizenship, considering the direct effect of constitutional norms in private law relationships.

Corinna Coors

Senior Lecturer, University of West London, UK

Is the UK Heading towards Protection of Image Rights?

The debate about the recognition of image rights in the UK is gathering momentum in the wake of the recent decision of the UK High Court of Justice which considered Rihanna, the pop star, and the clothes chain Topshop and the unauthorised use of Rihanna's image on T-shirts. Although a general right of protection for commercial celebrity image or personality does not exist in the UK, this case has once again tested the question of whether using a celebrity's image on merchandise articles can amount to passing off. A celebrity may currently obtain protection through various statutory and common law rights, such as the developing law of privacy, breach of confidence and, in particular, the tort of passing off. None of these rights were designed to protect image or personality rights; however, English courts are increasingly stretching the boundaries of traditional common law by recognising the commercial value of celebrity endorsements.

This article critically analyses whether the classical passing off action in the UK is heading towards protection of image rights which in turn could pave the way for the formal recognition of personality rights in the near future. Given the recent developments in the UK it is very likely that traditional common law remedies will evolve still further. This article compares and contrasts the position in the UK with the well-established right of personality in Germany, which has attracted interest in other countries following the famous Princess Caroline von Hanover decisions and her long battle with the German tabloid press on the publication of photos of the Princess and her family. Cases on image rights in Germany, involving famous athletes, such as the football icon Franz Beckenbauer and the tennis star Boris Becker, will be analysed to determine whether the law of passing off in the UK could be extended beyond the traditional common law situations involving false endorsement and false merchandising claims.

Thomas P. Corbin

Assistant Professor, Prince Mohammed Bin Fahd University, Saudi Arabia

Rule of Law Perceptions of Gulf Cooperative Council (GCC) Graduating Law Students

Law students studying in Gulf Cooperative Council's (GCC) comparative law programs will provide excellent candidates for legal employment in the Middle East in the next couple of years as long as the students have high educational achievements, are functionally literate in both English and Arabic and have a firm belief in the Rule of Law. As many comparative law programs now exist in the GCC, programs conducting the instruction in English to student's who's native language is Arabic and high academic performance is gaged by grades, the only true question comes down to the fundamental understanding of the Rule of Law and the optimistic belief that the Rule of Law will lead to changes in the employment of law students after graduation. To measure this knowledge and belief, a survey was given to a pool of law students at a GCC institution to gage their understanding of the Rule of Law and their belief in the concept as a force of change in their own personal situations. The results and analysis are contained within this paper.

Purpose Statement

The purpose of this project suggested by Dr. Thomas Corbin and supported by Dr. Richard Maguire is to gage the personal belief in the Rule of Law as a concept of significance in the advancements of career goals in male and female law graduates. This project's initial review will act as a sounding board for future review of the belief of the Rule of Law in other groups of students.

Anna Chronopoulou
Birkbeck College London, UK

From a Professional Tribe to a Business Neo-Tribe: Towards a Theory of Consumer-based Lifestyles in the Legal Profession

The transition of the legal profession from a profession to business has exposed the commodification of the legal profession. This affected the way legal services are offered, the structure of the legal profession and its composition. Despite the commodification of the legal profession, the importance of consumption in articulating legal professional identity has gone carefully neglected. The purpose of this paper is to address this absence. This paper proposes that an alternative focus is required in order to shed new light in the formation of legal professional identity. Neo-tribal sociality addresses the importance of consumption in the formation of consumer groups. From this perspective, it provides an alternative focus for conceptualising legal professional identity. This paper consists of three parts. The first part examines the traditional model of legal professionalism. It proposes that the legal profession can be conceptualised as a professional “tribe”. The second part explores the impact of the consumer-focused model of legal professionalism on the legal profession. The third part of the paper exposes the gaps of the consumer-focused model. It also proposes that a fuller realisation of neo-tribal sociality could provide alternative conceptualisations of legal professional identity.

Cristina Cojocaru

Junior Lecturer, Academy of Economic Studies in Bucharest, Romania

Romanian Constitutional Jurisdiction. Suspension and Impeachment of the President

In year 2012, following a change in the majority of the Romanian Parliament, the measure of suspending the President of Romania and the procedure to dismiss him, have occurred. This situation gives us the opportunity to analyse, in this particular case, the intervention of the constitutional jurisdiction in solving the dispute.

The situation is particularly interesting because, in addition to the inherent internal disputes, this case has also triggered to some extent opinions expressed by European officials, opinions interpreted by domestic political actors as biased to one or other of the parties involved.

Therefore, currently, the internal discussions on the amendment of some constitutional provisions and possibly, on the clarification of the character of the Romanian state in terms of type of the republic - parliamentary or presidential - are of great interest.

In this dispute between the Parliament and the Presidency, which has reflected, on the political level, the positions of the parliamentary majority in relation to the opposition, a number of laws and other normative acts have been adopted, while the dispute had to be resolved by state institutions, namely by the Constitutional Court within its legal procedures of reviewing the constitutionality of laws.

Mark Dawson

Professor, Hertie School of Governance, Germany

Constitutional Balance in the European Union after the Euro Crisis

This paper will explore how the European Union's response to the euro-crisis has altered the constitutional balance upon which its stability is based. The paper argues that the stability and legitimacy of any political system requires the structural incorporation of individual and political self-determination. In the context of the EU, this requirement is met through the idea of constitutional balance: a balance which carries 'substantive', 'institutional' and 'spatial' dimensions. Analysing reforms to EU law and to the EU's institutional structure in the wake of the crisis – such as the establishment of the European Stability Mechanism, the growing influence of the European Council and the creation of a stand-alone Fiscal Compact – it is argued that recent reforms are likely to have a lasting impact on the ability of the EU to mediate conflicting interests in all three areas. By undermining its constitutional balance, the response to the crisis could endanger the long-term stability of the EU project. The lecture will conclude by exploring the feasibility and desirability of recent EU reform proposals from a constitutional perspective, outlining three different models for the Union's medium to long-term future.

Alice Diver

Lecturer, University of Ulster, Ireland

'Bedroom Tax' or Rights Violation: Can the European Convention Protect Individuals' Property Rights Against Welfare Reforms?

This paper will examine recent, relevant Strasbourg case law on the concept of unlawful property deprivation (involving, for example, rights claims under Article 1 of Protocol 1, Article 8 and Article 14 of the European Convention) and a number of domestic cases from the jurisdictions of the United Kingdom and Ireland, with a view to establishing whether certain aspects of the 'austerity measures' (such as the controversial 'bedroom tax' in the UK) might yet be successfully challenged as infringing the fundamental rights of social housing tenants. Given the potential knock-on effects of such reforms (e.g. rent arrears, evictions, shared homes, contact implications for non-resident estranged parents) it will be argued here that a significant bundle of basic, juridical human rights (home and family life, peaceful enjoyment of one's possessions) might well be at risk of sliding towards a state of effective non-justiciability.

Given the number of people affected, and the potential for discrimination against a significant section of the population (ie estranged parents, unmarried persons, young people) the question of whether some form of equitable, loss-compensation template at domestic level ought to be made available to the worst affected families, will also be discussed. The paper will also evaluate whether the notion of familial property might itself require extra protection in domestic law and policy, over and above those protective rights afforded to other forms of private property.

Valerie Epps

Professor, Suffolk University, USA

Civilian Casualties in Modern Warfare: The Death of the Collateral Damage Rule

This article examines the changing nature of warfare over the last two centuries and documents the dramatically shifting ratios of military to civilian deaths. It then focusses on the collateral damage rule, one of the central operational rules regulating the conduct of hostilities, that is meant to offer protection to civilians during wartime by only allowing civilian casualties that are incidental to legitimate attacks on military targets. The article questions the continuing validity of the rule when, in recent decades, the overall statistics for war-related deaths reveal that civilian fatalities are considerably greater than military deaths. The article concludes that, in the context of modern warfare, the collateral damage rule can never accomplish what it purports to do. It then explores what should be the fate of a legal rule, central to the laws of armed conflict that cannot, because of the nature of modern warfare, be effective. Finally, the article makes some suggestions that may, in small part, start to fulfill the purposes of the collateral damage rule.

James Faber

Lecturer, University of the Free State, South Africa

The 'Rescuing' of Lost Wills: A South African Perspective

On 1 October 1992 the Law of Succession Amendment Act 43 of 1992 came into operation. This Act effected a number of changes to the Wills Act 7 of 1953, inter alia through the bestowal of a power of condonation on the South African High Court with regard to formally defective wills. In terms of section 2(3) of the Wills Act, a document which fails to comply with all the formalities required for the execution of a will can nevertheless be condoned and thus treated as a valid will for purposes of winding-up the deceased's estate under the Administration of Estates Act 66 of 1965. The High Court can exercise its condonation power only with regard to a document (writing is thus required) that was drafted or executed by the deceased, and intended by the deceased to be his or her will. The purpose of the condonation provision is to give expression to the intention of the testator where non-compliance with the strict formalities imposed by the Act would otherwise lead to the frustration thereof.

In a number of recent judgments the High Court was faced with controversial applications based on section 2(3) of the Wills Act. For example, in the cases of *Ex parte Porter*, *Hassan v Mentor* and *Yokwana v Yokwana* the condonation provision was considered where the original will was lost as opposed to the usual situation where an existing document is formally defective. The applications were unsuccessful in *Ex parte Porter* and *Yokwana v Yokwana*, but in *Hassan* section 2(3) was indeed erroneously applied. This paper reflects critically on the conflicting judgments by exploring the current legal position regarding the application of the condonation provision, and the legal predicaments regarding lost wills.

David Holmes

Lecturer, University of New South Wales, Australia

‘The Other Man on the Podium’: The Case of Peter Norman and the Rights of Athletes

The 1968 Olympics Black Power salute is one of the most enduring images of the twentieth century. The photo, taken by photojournalist John Dominis, captures the protest by African-American athletes Tommie Smith and John Carlos during the medal presentation for the men’s 200-metre final. The striking image shows Smith and Carlos with their heads defiantly bowed and each with a raised black-gloved fist in protest against racial discrimination. Responding to this protest, IOC President Avery Brundage, a known racist, suspended Smith and Carlos from the Olympic village and U.S. team. The other man on the podium, silver medallist, was lesser-known Australian Peter Norman. Although he did not protest in an overt manner as Smith and Carlos had done, he wore, as a gesture of solidarity, an Olympic Project for Human Rights badge. For the simple and innocuous act of wearing a small plastic badge—little larger than a coat-button!—the Australian Olympic Committee (AOC) terminated Norman’s athletic career. Despite qualifying for the 1972 Olympics—on *five* occasions for the 100 metres and *thirteen* occasions for the 200 metres—the AOC denied Norman a place on the Australian team. With his dreams cut asunder Norman quit representative athletics. Despite having effectively left athletics in 1972, the campaign against him carried through to the Sydney 2000 Olympics. That year, every Australian Olympic medallist was invited to parade in the Opening Ceremony, bar one—Peter Norman. On 11 October 2012 (forty-four years *after* the 1968 Olympics and six years *after* his death) the Australian federal parliament finally offered a formal apology. Despite this overdue gesture, the AOC continued to eschew any semblance of an apology. There was, in other words, to be no *mea culpa* from either Olympic or athletic officialdom. As the AOC’s Director of Media and Communications, Mike Tancred, stated at the time: ‘We’ve got nothing to apologise for because we’ve never wronged Peter Norman.’ He further contended that parliamentary debate on this matter was ‘irrelevant’. This paper explores the rights of athletes in Australia *vis-à-vis* the case study of Peter Norman. It looks, in particular, at the workings and culture of the AOC; and, also, at the role of the Court of Arbitration of sport.

Christoforos Ioannidis

Ph.D. Student, King's College London, UK

**Are the Conditions of Statehood Sufficient?
An Argument in Favour of Popular Sovereignty as
an Additional Requirement for Statehood, on the
Grounds of Justice as a Moral Foundation of
International Law**

The Montevideo Convention of the Rights and Duties of States (1933) codified the declarative theory of statehood as accepted as part of customary international law and laid down the five requirements for statehood which are often summarized as 'the principle of effectivity': (a) permanent population, (b) defined territory, (c) organised power (government) and (d) ability to enter into relations with other states. The aim of this article is to discuss the possibility of an additional requirement: popular sovereignty in a specific historic sense. I will also discuss whether this requirement should be regarded as a necessary and/or sufficient condition for statehood. The importance of this additional condition will be explained in the light of the legitimacy of exercise of power. Furthermore, it will be argued that this additional requirement may help promote the suggested primary goal of international law, that being justice (instead of peace as easily inferred by the UN Charter) in the specific sense of the protection of basic human rights, as suggested by Buchanan in *Justice, Legitimacy and Self-Determination*. It has to be noted that both main points, namely Buchanan's suggested notion of justice as the primary goal of international law and my main argument of popular sovereignty in a specific historical sense as a requirement of statehood are not to be regarded as relating to any form of Natural law Theory. It is not the case that I maintain that any international norm which violates justice as ethical foundation of international law is, because of that reason, legally invalid. Although the Legal Positivism vs Natural Law Theory is certainly not the focus of this paper, if one wishes to regard Legal Positivism and Natural Law Theory as mutually exclusive, my suggestion falls entirely under the umbrella of Legal Positivism for reasons that will be explained.

Ivan Kosnica

Assistant Professor, University of Zagreb, Croatia

Hungarians and Citizenship in Croatia-Slavonia 1868-1918

According to the Austro-Hungarian Compromise from the year 1867, Croatia-Slavonia was defined as a part of Hungarian lands. By subsequently reached Croatian-Hungarian Compromise in 1868 Croatia-Slavonia was recognized as a special autonomous territory within these lands. Nevertheless, the special Croatian-Slavonian citizenship was not established. .

Since the national citizenship was one for all Hungarian lands, the settlers from Hungary in Croatia-Slavonia were not foreigners with regard to national citizenship. However, these settlers were not legally equal to the indigenous people. In the legal system, there were barriers that prevented them to vote and stand for elections to the Croatian-Slavonian Diet. These settlers were also excluded from the emerging system of social rights. Attitudes towards the immigrants as others were also visible in some acts of autonomous administrative bodies in which they were classified as foreigners. In doing so, they used municipal citizenship in Croatia-Slavonia as a basic criterion of distinction. Therefore, these settlers were naturalized in the moment they acquired affiliation to one of the Croatian-Slavonian municipalities. In this way Hungarian settlers were partly excluded from full integration to Croatian society. However, it should be said that the exclusion was only partial. Keeping in mind that Central Government in Budapest had significant impact on Croatia-Slavonia these settlers were in some cases even privileged to indigenous people. For example, the settlers were highly over-represented in the railways in Croatia-Slavonia.

Considering the above, we can conclude that the Hungarians in Croatia-Slavonia, despite the fact there was a national citizenship for all the lands of Hungarian crown, were a special group of citizens partly excluded and in some areas even privileged to indigenous people.

Eric Leiva Ramirez

Teacher, Los Andes University, Colombia

The Phenomenon of State Responsibility for Acts Caused for the Legislator

The present text is pretended analyzing the phenomenon of state responsibility for acts caused for the legislator, has been a work done by both the doctrine and jurisprudence in the mid-twentieth century. In France, for example, introduced the first precedent in case law in 1934. In Spain, the study began to be managed with the promulgation of the Constitution of 1978 introduced the first court ruling in the year 1993; for Colombia the Constitution of 1991 introduced in Article 90 the constitutional basis of the liability of the State, without any implication that the jurisprudence of the Council of State found the foundations of this responsibility in various provisions of the Constitution of 1886, such as Articles 2, 16 and 30 which enshrined the principle of legality the state to protect life, honor and property of citizens and guaranteeing private property and other rights acquired under the title right; however, the early failures associated with this degree of imputation in Colombia were issued by the highest court of Administrative Colombia in the year 1998 and the Constitutional Court since 2006 court order that established some of the characteristics that this legal topic.

Matthew Lewans

Professor, University of Alberta, Canada

Pragmatism and Judicial Restraint

“This rule recognizes that, having regard to the great, complex, ever-folding exigencies of government, much which will seem unconstitutional to one man, or body of men, may reasonably not seem so to another; that the constitution often admits of different interpretations; that there is often a range of choice and judgment; that in such cases the constitution does not impose upon the legislature any one specific opinion, but leaves open this range of choice; and whatever choice is rational is constitutional.”

-James Bradley Thayer¹

One of the most interesting doctrinal schisms in the common law world concerns the law pertaining to judicial review of administrative decisions. In the United Kingdom, the practice of judicial review revolves around the doctrine of jurisdictional error, which entitles judges to intervene when they perceive that an administrative decision exceeds the jurisdictional parameters established explicitly or implicitly by Parliament.² However, because this doctrine gives judges a broad license to manipulate the parameters of judicial review by attributing implied intent to Parliament, its constitutional legitimacy is often questioned by public law scholars.

By contrast, the doctrine of judicial deference which prevails in the United States of America asserts that judges should only intervene when an administrative decision is “unreasonable”, in the sense that it is unfair or unjustifiable in light of the relevant law.³ The fundamental premise underlying this view is that administrative officials have legitimate authority to interpret the law, which in turn requires judges to exercise restraint when reviewing administrative decisions.

In this paper, I will highlight the theme of judicial restraint in American public law, beginning with James Bradley Thayer’s landmark thesis, and trace its historical influence on the American Supreme Court, particularly through the jurisprudential legacy of Oliver Wendell Holmes, Louis Brandeis, and Felix Frankfurter. Furthermore, I will show how American discourse on judicial restraint spawned similar discourse in the United Kingdom and Canada through the work of legal functionalists like Harold Laski, John Willis, and Bora Laskin. Finally, I will argue that while this discourse enriched debates about the constitutional relationship between the

¹James Bradley Thayer, “The Origin and Scope of the American Doctrine of Constitutional Law” (1893) 7 *Harvard Law Review* 129, 144.

² See, eg Amnon Rubinstein, *Jurisdiction and Illegality*, (Oxford: Clarendon Press, 1965); *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 (HL).

³See, eg *Chevron USA Inc v Natural Resources Defense Council, Inc* 467 US 837 (1984).

judiciary and the modern administrative state, it is in need of further elaboration in order to reconcile it to more fundamental concerns about democratic values, constitutionalism, and the rule of law.

Guofu Liu

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Impacts, Prospects and Challenges of 2012 Exit and Entry Administration Law of China

Since the establishment of People's Republic of China in 1949, the events of foreigners with Chinese originality and overseas Chinese in mass influx happened now and then. Temporary protection is the temporary refugee and assistance provided with mass influx people by receiving country as well the main protection for mass influx people in international society, To solve the issue of foreigners with Chinese originality and overseas Chinese in mass influx, separate policies need to be taken after distinguishing overseas Chinese, foreigners with Chinese originality and other foreigners as well with the reference of temporary protection of international society.

Nina Christiane Lueck

DAAD (German Academic Exchange Service) - Lecturer in Law,
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The Golden Rule in the Course of Time: Charitable Foundations in England, Germany and the EU Philanthropic Governance Perspective - of Altruism and Calculation

The aim of the paper is to analyse the development of the so-called third sector from ancient times to the philanthropic landscape we find in Europe as of today.

There is a wide understanding that the very beginning of charitable activities dates back to the Codex Justinianus that was issued by Eastern Roman Emperor Justinian I between 529-534 and contained several provisions that relate to dispositions by will that were done for “*piae causae*” (a charitable purpose).

While until the era of enlightenment the church played a pivotal role in having its influence on wealthier individuals’ charitable activities in order for them to enter the “kingdom of heaven”, secularisation and later on industrialisation brought about a concise understanding that philanthropic purposes contributed to the well-being of society as a whole. There are numerous examples of industrialists that set up exemplary health care and educational systems for factory and mill workers and their families as it was understood that in the long run such a pursuance brought about increased productivity. As the time in, between and after the two World Wars faced inflation and financial instability, charitable foundations faced seizure, closure (and especially in the case of Germany, annulment and forced amendment of purposes by authorities in order to provide capital for the war industry).

In the post-war era, Europe has faced a gradual rise of third sector activities to what has nowadays become the “European philanthropic landscape” with a strong correlation between charitable foundations and European civil society.

After having given a short overview of the development of the legal framework of charitable foundations, the paper will pick scenarios of each epoch and illustrate the legal framework and governance elements that were prevalent during that time. It will show how the conception of non-profit governance has changed during the course of time and how this links in with the comprehension of philanthropic governance that we find in today’s Europe.

Guy Lurie

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Medieval Emergencies and the Contemporary Debate

The contemporary debate on emergencies and the state of exception often relies on historical examples. Yet the most recent discussions on the state of exception (a legal construct that deals with emergencies) also assume its modern inception. When alluding to historical models of regulating emergency powers, the examples are almost all taken from the modern post-French revolution period, or, from ancient Republican Roman times (the famous dictator model).

This article shows that medieval France formulated its own state of exception, meant to deal with emergencies, based on the legal principle of necessity. This article challenges the historical narrative on the modern inception of the state of exception, showing its centrality in the long process of creating the early-modern French state. In second half of the thirteenth century French jurists elaborated upon this principle, and the French crown began to use it to levy taxes it could not otherwise have raised. This article examines the use of this principle in late medieval France in the context of taxation. In analyzing the application of this legal principle, this article points to several historical insights that this state of exception has for the contemporary debate: just as some scholars fear in the present, the French medieval state of exception often served as a pretext meant to change the legal order, turning the exception into the ordinary. Ultimately the medieval state of exception was limited in use since the crown had to negotiate with and retain the approval of political elites.

Late medieval France saw the non-linear process of the creation of some of the institutions that later became the modern state: a financial and legal bureaucracy, a permanent military, and the tax system to finance them. The principle of necessity was an instrument that helped to facilitate the growth of these institutions.

Athanasios Mihalakas

Professor, State University of New York, USA

The Evolution of Federalism in the US

The U.S. is going through a period of 'mild' evaluation of the form of government. Today, commentators from both the right and the left argue increasingly about the need to change (or at least reevaluate) the system of governance; either because the vision and architecture of the founding fathers has been distorted, or because the vision and architecture of the founding fathers no longer meets the needs of a 21st century world.

At the heart of this discussion lies the nature of federalism: the U.S. system of governance is federalism, but is it still being applied according to its fundamental tenants. In this paper, I will first outline the basic tenants of U.S. style federalism (as constructed by the founding fathers), and then explore the evolution of federalism in the past 200 years. Particular attention will be given to the actions of the Supreme Court, and how it defined the boundaries and reach of both the federal and state governments under U.S. federalism.

The three main parts of the paper will focus on the Judiciary Act of 1789, the Marshall Court and its early interpretation of the constitution, the Post Civil War Era and the Sixteenth (direct income tax) and Seventeenth Amendments (direct election of Senators) to the US Constitution, and finally more recent limitations of the Tenth Amendment, and the powers of States vis-à-vis the Federal government.

Michael Malloy

Distinguished Professor, University of the Pacific, USA

There are no Bitcoins, Only Bit Players: Law, Policy and Socio-Economics of Virtual Currencies

Over the past year, there has been an explosion of interest – and a frenzied up-swing in trading – in bitcoins. This offers us an unusual opportunity to observe the emergence of a new, and so far unregulated, market. Scholars interested in the law and policy of financial services regulation are also presented with an important opportunity to test assumptions about the ways in which regulation interacts with business and commercial activity. Policymakers confront a moment of truth – to regulate or not to regulate, and when, and how.

One basic problem is the difficulty in determining what is involved in bitcoin creation and trading. If bitcoins really are a “virtual currency,” then fiscal supervision by central banks might be the most appropriate approach to regulating bitcoin activity. If they are in any significant sense “currency,” then treatment under the U.S. securities regulation framework is categorically ruled out, since “currency” is excluded from the statutory definition of “security.” Likewise, bitcoins would not be “commodities” subject to supervision by the Commodity Futures Trading Commission. However, if bitcoins are viewed as derivatives of currency, or futures contracts in currency, then they may be subject to securities or commodities regulation, depending on their basic characteristics.

Recently, bitcoins began to be accepted by some vendors as a form of payment. If it becomes commonplace for bitcoins to operate as a payment mechanism, then they should be subject to transactional rules applicable to payments.

My presentation explores the legal character of the bitcoin and other emerging “virtual currencies,” and the legal and policy implications of bitcoin trading. I conclude by arguing that the appropriate legal analogue for classifying bitcoins should be investment and commercial notes, since this would lead to the application of an appropriate and effective body of transactional and regulatory law to bitcoins.

Clement Marumoagae

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South African Law regarding Employees Resignation due to Employers Conduct

In South Africa, the Labour Relations Act 66 of 1998 (LRA) is meant to advance economic development, social justice, labour peace and the democratisation of the workplace by among others giving effect to and regulating the fundamental rights conferred by section 23 of the South African Constitution. One of the objects of the LRA is to promote and facilitate collective bargaining at the workplace and at sectoral level. As such, the LRA provides for procedures relating to the hiring and firing; strikes; resolutions of disputes; disciplinary matters; employer and employees negotiations and unions formation and operations. The LRA also creates dispute resolution institutions such as the Labour Courts, Commission for Conciliation, Mediation and Arbitration (CCMA), bargaining councils, statutory councils and workplace forums. Section 23(1) of the South African Constitution provides that 'everyone has the right to fair labour practices'. The Constitutional right to fair labour practice includes the right not to be unfairly dismissed.

This paper aims to discuss unfair labour practices against employees perpetrated by employers. This will be done with specific reference to instances where employees find themselves in a situation where they are forced to leave their workplaces due to the deliberate conduct of their employers, which conduct employees find irreconcilable with continued employment. This paper will highlight as to when the conduct of the employer will be regarded as sufficient to be regarded as the sole reason the employee left his or her employment, thereby constituting unfair dismissal in the form of constructive dismissal. This paper deals with the development of South African Labour Jurisprudence in this area. I start by outlining a general introduction by looking at the influence of English Law in this area of South African Labour Law. I will then proceed to discuss the different jurisprudential approaches taken by South African Labour courts. I will be arguing that South Africa needs a general consistency in approach by labour courts when dealing with constructive dismissal cases. I will be arguing that there are no clear guidelines as to when a person could be said to have been constructively dismissed, hence there is a need for such guidelines to assist our courts to be more consistent with their decisions.

Brian McCall

Orpha and Maurice Merrill Professor in Law, University of Oklahoma
College of Law, USA

**Gambling on Our Financial Future:
How the Federal Government Fiddles While State
Common Law is a Safer Bet to Prevent another
Financial Collapse**

Carol Chi Ngang

Academic Associate, University of Pretoria, South Africa

Reflections on the Realisation of the Right to Development within the Framework of International Cooperation

The right to development emerged as the most important of all human rights, achievable essentially through international cooperation but has been constrained because of the lack of an operational model for implementation. International cooperation suggests an equitable global system for redistributive justice according to which, developing countries have consistently asserted claims to development assistance from the international community. In spite of the universal consensus that was reached at the World Conference on Human Rights in Vienna in 1993, the international community has been reluctant to submit to the obligations that derive from the fact of recognising the right to development as an inalienable human right. Thus, this paper examines the potential of international cooperation for the realisation of the right to development. It highlights that the controversy surrounding international cooperation as an implementation mechanism stems from conceptual ambiguities which directly translate into operational difficulties. Grounded in the legally binding UN Charter and regulated by international human rights instruments, international cooperation provides a framework for the normative force of the right to development and therefore imposes legally binding obligations that necessitate the international community to complement the efforts of developing countries for the realisation of the right to development. The right to development is an outcome to be achieved, which entails the realisation of all human rights for the constant improvement of human well-being and a process towards achieving that outcome, which must be rights-based. The paper argues that international cooperation constitutes that rights-based process and because it is as important as achieving the outcome, it can be claimed by developing countries and exercised as a right against the international community. The paper concludes by making the case for shaping international cooperation as an operational model for implementation on the right to development through which global redistributive justice can be achieved.

Jorge Nunez

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Sovereignty Conflicts as a Distribute Justice Issue

Most—if not all—conflicts in international relations have—to an extent—something to do with sovereignty. On the theoretical side, we learn at University that either considered as a strong concept or one that has lost relevance, it is still discussed. On the practical side, the prerogatives a State has over its people and territory appear to be the highest. Within these ideal and real backgrounds, there are various sovereignty disputes around the world that struggle between legal and political limbo, status quo and continuous tension with various negative consequences for all the involved parties (e.g. violation of human rights, war, arms trafficking, only to name a few). It is increasingly clear that the available remedies have been less than successful, and a peaceful and definitive solution is needed. This article proposes a fair and just way of dealing with certain sovereignty conflicts. The paper considers how distributive justice theories can be in tune with the concept of sovereignty and explores the possibility of a solution for sovereignty conflicts. I argue that the solution can be based on Rawlsian principles.

Nadia Ramzy

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The Interpretation of International Arbitration Agreements: Are Specific Interpretation Policies Required?

The interpretation of international arbitration agreements plays a vital role in ascertaining the meaning of these agreements and, consequently, the intentions of the parties behind them. Rules of construction used in interpreting these agreements are, in their majority, no different to those used in interpreting ordinary contracts.¹ To a great extent, this is a result of the silent treatment given to the subject by international arbitration conventions and most national arbitration laws. Add to that the fact that arbitration clauses usually apply formulae that are meant to deal with unpredictable events to which hardly ever clear-cut facts are produced.² This is where construction rules are important in ascertaining the meaning of these clauses/agreements and the intentions of the parties behind them. Regardless, an arbitration clause inside a contract is of a particular procedural/different nature than that contract and hence the possibility of applying specific rules of interpretation to these agreements might be necessary.

As way of introduction, this paper will first examine the interpretation policies produced under certain international instruments such as the New York Convention and the UNCITRAL Model Law. Afterwards, the paper will examine the importance and possibility of adopting specific rules of construction for the interpretation of international arbitration agreements. Finally, the paper will examine the possible influence of the language of the arbitration agreement on its interpretation by courts and arbitral tribunals.

¹For example; *McCullough & Co., Inc. v. Ministry of Post, Telegraph & Telephone, Iran-US Award 225-89-3 XII Y.B. Comm. Arb.* 316, 218 (1987).

²For example; the ICC Standard Arbitration Clause, “*All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the ICC . . .*”, at (<http://www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Arbitration/Standard-ICC-Arbitration-clauses/Standard-ICC-Arbitration-Clauses-in-several-languages/>)

Claudia Ribeiro Pereira Nunes

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Have "Special Poverty Families" been Granted Adequate Food Right in Legal Amazon Region?

Brazil is one of the largest food-exporting countries in the world. The economic development of the country depends on the export of food. On the other hand, the Brazilian Federal Constitution guarantees the Adequate Food Right to the Brazilian population and was created the National Food and Nutrition Security. Against this background, in which the foods has dual aspect - law and economic development instrument, the overall aim of the research is to investigate whether there is food and nutrition security, specially to the single-parent families headed by women from 18 to 25 years, with the least 3 or 4 children, expelled from the countryside land for various reasons and who undergo to Brazilian cities to degrading working conditions - called this research "special poverty families". The specific aims are: (i) analyze the institutionalization direction of Adequate Food Right in Brazil; (ii) identify and recognize the identity group "special poverty families", from the organization and the affirmation of their knowledge and doings; and (iii) investigate if the Adequate Food Right or National Food and Nutrition Security just created a survival strategy or supplementary income for these families. The methodologies used are: (i) theoretical - law, economics and sociology literature review; (ii) secondary data - official websites; and (iii) field aiming to recognize and investigate the identity group as a producer of food disrespects access to food "special poverty families", which demonstrates the socio-economic contrast in Brazil. The field sample was delimited to the Legal Amazon Region (Acre, Roraima, Amazonas, Pará, Rondônia, Mato Grosso, Amapá, Tocantins, Maranhão) in Brazil. Justifies the sample because, the Legal Amazon region is one of the increased agricultural productivity, as well as goes through a process of social (des)construction of citizenship, based on socio-economic inequality, as well as the blatant disregard for human dignity.

Maria Carolina Romero Lares
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The Right of Protest at Sea, Flag State versus Coastal State

The recent developments regarding the boarding, detention and seizure of the vessel *Arctic Sunrise* and its crew after a demonstration at the Prilazlomnaya oil platform in the Pechoran Sea, has sparked the controversy about the right of non-governmental organizations to carry out protests at sea and the right of coastal States to board, investigate, inspect, detain and seize vessels flying a third State flag in the Exclusive Economic Zone (EEZ).

On 19 September 2013, authorities of the Russian Federation seized the *Arctic Sunrise*. The vessel is an icebreaker, which flew the flag of the Netherlands and was operated by Greenpeace International. Following the boarding, members of the crew composed of a Dutch citizen and nationals from eighteen different countries were arrested. The protestors were originally charged with piracy, and later on those charges were reduced to "hooliganism".

On 21 October 2013 the Kingdom of the Netherlands initiated proceedings against the Russian Federation at the International Tribunal for the Law of the Sea (ITLOS) in Hamburg, requesting Russia to release the vessel and its crew. Russia informed the Tribunal that it did not intend to take part in the proceedings before ITLOS. Nevertheless, on 22 November 2013, the Tribunal ordered Russia to release the *Arctic Sunrise* and the Greenpeace campaigners. As of today, all crew members have been released, but not the vessel.

The purpose of this paper is to offer an overview of the rights and duties of demonstrators at sea and the rights and obligations of coastal and flag States in regards to vessels carrying out demonstrations or protests while navigating within an EEZ. This analysis could shed some light on the different ways in which the above mentioned activities could be performed and the role governments should play to ensure safety of navigation, the protection of the marine environment or property, and human lives on their EEZ.

Elfriede Sangkuhl

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How the Macroeconomic Theories of Keynes Influenced the Development of Taxation Policy after the Great Depression of the 1930's

This paper will examine the impact of Keynesian economics on taxation policy in the Western world after the Great Depression and World War 2.

Keynes was a macroeconomist whose seminal economic work, *The General Theory of Employment, Interest and Money*, was first published in 1935. The *General Theory* was written as a response to the human tragedy caused by Great Depression. Keynes' *General Theory*, though not written with a view to practical application and only as a theory, was written with a view to challenging the economic orthodoxy of the times. This orthodoxy was the classical theory of economics in the Ricardian tradition. Keynes' theory became the new orthodoxy and profoundly affected economic policy, including tax policy, especially in the post-World War 2 period, in the Western World.

Keynes explicitly propounded that taxes could be used to redistribute wealth and thus increase the propensity to consume and that taxes could be used as a form of forced corporate savings, to reduce national debt, and so, reduce the propensity to consume. In other words, taxation policy could be used to stimulate or slow down an economy as required. Prior to Keynes, taxation policy was more about raising funds for essential government expenditures.

This paper will attempt to illustrate how economic theories influence public policy, especially in the area of public finance and taxation policy.

Bradley Smith

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South African Cohabitees and the Right to Inherit Intestate

South African law does not have a comprehensive "law of cohabitation" in the same sense as it has a "law of marriage". The legal position of persons who live together out of wedlock is instead comprised of a pastiche of ad hoc (and inconsistent) extensions to such relationships of some of the legal rights created by marriage. In addition, despite becoming the first country expressly to prohibit unfair discrimination on the basis of sexual orientation in the Bill of Rights enacted in 1994, South African law provides better protection to same-sex cohabitees than to their opposite-sex counterparts. The reason for this is the precedent-setting judgment delivered in 2005 in the matter of *Volks v Robinson*, in which it was held that the Bill of Rights does not demand the extension of marriage rights to opposite-sex cohabitees who have chosen not to marry despite being legally permitted to do so. This so-called "choice argument" has effectively blocked any future extension of the rights of marriage to opposite-sex cohabitees.

Same-sex couples are in a stronger position because, in the years before same-sex marriage was legalised by the Civil Union Act of 2006, the courts were prepared to extend certain rights previously reserved for spouses to such couples. The rationale for this was a combination of the fact that same-sex couples could not marry at the time coupled with the prohibition of unfair discrimination on the basis of sexual orientation. As the Civil Union Act did not revoke these rights, unmarried same-sex couples are still able to invoke them despite being allowed to marry.

Although developments since 2006 have seen the eradication of many of the erstwhile discrepancies between the rights of same-sex versus opposite-sex couples, one discrepancy that persists is that while a surviving same-sex cohabitee may inherit the intestate estate of his or her deceased partner, a surviving heterosexual cohabitee may not. It has been suggested that the "choice argument" in *Volks* should now apply equally to same-sex couples, so that this right should fall away. This paper considers this and other arguments for and against the retention of the current legal position and posits, *inter alia* on the basis of Canadian law, an argument for the extension of a right to inherit intestate to unmarried opposite-sex couples.

Elizabeth Snyman-Van Deventer

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A South African Legal Perspective on Gambling and Dog Racing

There is a relative small, but active greyhound industry in South Africa. It is difficult to determine the exact scope of the industry, because of distrust and secrecy as a result of its prohibition in South Africa. Two very definite interest groups were identified, namely the pro-legalisation group (pro-sport and the pro-racing and betting groups) and the anti-legalisation group (mainly animal welfare groups and particularly the National SPCA). It is very difficult to find common ground between the two groups apart from their love for the animals. If dog racing is legalised, whether on an amateur level or professionally with betting, the input from animal welfare groups will be of major importance to ensure the welfare and protection of the dogs. The current ban in South Africa on dog racing may be unconstitutional. Only the welfare and protection of the animals might be a reason to keep the ban in place if it can be proved that the animal welfare issues outweigh the constitutional rights of the greyhound owners. The local greyhound racing industry has been prejudiced and discriminated against as the majority of other dog-related pastimes are legal in South Africa e.g. field trials, agility events, dog shows, etc. as well as legal racing e.g. horses and pigeons. Furthermore gambling and socio-economic problems associated with dog racing in the past are not sufficient reason anymore as gambling in general is a legal activity in South Africa. But there still is opposition to the creation of additional gambling opportunities because of the socio-economic problems associated with gambling. If greyhound racing is legalised in South Africa, certain fundamental principles underlying a regulatory framework must be determined with input from all stakeholders.

Susana Sousa Machado

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Reflections on Freedom of Religion in the Workplace: Conflicts and Reasonable Accommodation

Religion plays an important role on human being. The increase in the number of cases about freedom of religion in the workplace decided by the courts in Europe indicates that employers are not prepared to deal with religious diversity. In fact, companies are faced with diversity and multiculturalism. Therefore, religion cannot live outside of the workplace as religious beliefs are part of human existence. In this paper we intend to reflect on the different areas in which religious freedom can be manifested. Starting from concrete problems we intend to consider the perceptions of employees concerning religious accommodation. The present investigation aims at providing an answer to a problem that, in simplistic terms, could be equated as follows: what are the constraints to religious practices in one's working place?

Dwarakanath Sripathi
Professor, Osmania University, India

Minority Rights Protection in India and Greece – A Comparative Study of Recent Developments

Minorities are groups of people who are held together by ties of common descent, physical characteristics, traditions, customs, language or religion or any combination of these and who in relation to some other groups with which they are associated, occupied sub-ordinate status, received differential treatment and are excluded from full participation in the life and culture of the society of which they are a part. A minority is not always a numerical minority in the sociological sense, but a group of individuals who are less dominant and devoid of power. In other words a minority group is a group which is politically less influential when compared to other sections of the society and very frequently subjected to exclusions, discriminations and other differential treatments. A minority in terms of international law is a group of individuals residing within a sovereign nation comprising less than 50 percent of the population of that nation's society and who share common characteristics of ethnic, religious or linguistic nature that sets them apart from the rest of the population. Societies consist of various cultural and religious communities who are proud of their identities and therefore wish to preserve them. Bifurcation of population into a majority and several minorities based exclusively on their religious or cultural identities is but natural to any pluralistic society. A secular state does not believe in religion, however it provides equal rights and protection to all religious and other minorities and prevents discrimination between citizens on the ground of religion. Hence the idea of minority protection is a feature of equality and very much present in a secular state like India.

This paper explores the dimensions of protection accorded to minorities in India and Greece, since both the countries have considerable groups of minorities. In India religious minorities particularly the Muslims who form the largest religious group are provided equal rights and constitutional safeguards. Whereas the Greek government defines the rights of Muslim communities in Western Thrace, both Turkish and Pomak, on the basis of religion rather than ethnicity in accordance with the Lausanne Treaty since the treaty grants the Muslim minority the right to organize and conduct religious affairs free from government interference.

Pierre Thielborger

Professor, Ruhr University Bochum, Germany

Three Conceptualizations of the Right to Water in International Law

This paper develops and discusses three different conceptualizations of a human right to water in international law: a derivative right as part of Art. 11 of the International Covenant on Economic, Social and Cultural Rights; a right as part of international custom; and a right as an amalgamated right of different treaty-based rights that is also mirrored in customary law. It highlights the benefits of the third approach, emphasizing the right's multi-faceted nature (relating to several rights such as life, the highest attainable standard of health and an adequate standard of living) while suggesting the relevance of more flexible approaches to the concept of custom. Taken together, this amended conceptualization of the right to water offers a number of advantages, in particular in securing the right to water's practical implementation: a lowered burden of proof (in cases of a violation), its broader reach with regard to States being skeptical of socio-economic rights, and its potentially higher status in national legal regimes.

Blanca Torrubia Chalmeta

Director, University Master in Advocacy, Spain

&

Ana Maria Delgado Garcia

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The Virtual Teaching System

The Open University of Catalonia (UOC) is a pioneer University in the use of technology for online learning. The virtual teaching system enables to acquire professionalizing competences and facilitates the practitioners the update of knowledge in an optimum way. That is possible, on one hand, thanks to the resources for theoretical and practical knowledge that give Technical communication tools. And, on the other hand, because of the flexibility that an asynchronous learning model entails. This allows a way of learning far away from classical teaching.

In our paper we will show you the experience from the point of view of two University Masters: the University Master in Taxation and the University Master of Advocacy.

Lisa Tripp

Associate Professor, Atlanta's John Marshall Law School, USA

Lessons for an Independent Scotland from Greece's Euro Tragedy

Scotland will soon decide whether to remain part of the U.K. or become an independent nation. Should Scotland choose independence, it may try to join a formal currency union with the U.K. or the E.U. This article focuses on the risks small nations can face in a currency union, as told through the prism of Greece's experience in the Eurozone. Since the world financial crisis hit Europe, Greece has become the worst case scenario for small countries in a currency union. The austerity conditions the Troika requires in exchange for hundreds of billions in loans have caused a depression of historic magnitude in Greece, without reducing its debt. Greece is also something akin to a zombie democracy because all of the important decisions are effectively made by the Troika who have no electoral accountability. Joining a currency union always entails some loss of sovereignty and the benefits can certainly outweigh the risks. However, Greece shows that important aspects of national self-determination like tax policy, spending, interest rates, unemployment targets, pensions, work rules, etc., can be compromised if a country gives up its currency and is hit by financial calamity. These are important risks to consider if Scotland chooses independence.

Rika Van Zyl

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Problems with the Application of the Inter Vivos Trust in South Africa

An important development in the South African inter vivos trust was the case of *Crookes v Watson*¹ in 1956. It was established in this case that the inter vivos trust is a contract in favour of a third person. This principle was adopted by South African's Roman-Dutch common law. There are however difficulties in applying the inter vivos trust as a contract in favour of a third person. There are many opinions in South Africa that is of the view that the decision of the court was wrong in its decision that the inter vivos trust is a contract in favour of a third party. The courts however did not listen to the opinion of the writers and in 2011 the *Potgieter v Potgieter* case confirmed the view of the court that the inter vivos trust is a contract in favour of a third party.

The problems on the application of this principle now include that the beneficiary must accept the benefit stipulated for him. It is this acceptance that also gives the beneficiary a right. This opinion is also followed in the Netherlands and Belgium. Germany and England however follows a confirmation doctrine that just confirms the beneficiary's right. This acceptance doctrine leads to the problem that the founder and trustees cannot amend the trust deed without the beneficiary's consent after the beneficiaries have accepted the benefits. The beneficiary becomes a party to the contract and therefor must consent to any changes to the trust deed. This may very well be impossible to find all the beneficiaries to a trust deed to consent to the amendments.

Other problems include the nature of a trust and whether it can be seen as a "contract" to be proclaimed as a "contract in favour of a third person". South African legislation is also silent on the matter.

¹ *Crookes NO And Another v Watson and Others* 1956(1) SA 277 (AD).

Norbert Varga

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Citizenship and Civil Procedure Law (Act I of 1911) in Hungary

Civil procedural law could only be codified at the beginning of the 20th century in Hungarian legal history. Criminal and civil litigation were regulated with separate acts. The advanced attributes of accusatory and an inquisitorial procedures were incorporated in civil procedural law (Act I of 1911), based on the mixed procedural system, basically, took the German and Austrian example into account. The role citizenship status has in this act of procedural law created by Sándor Plósz, professor of law is a very interesting thing to examine. The objective of my lecture is, among other things, to describe the role citizenship had, taking personal and territorial scopes into account, how the jurisdiction against foreign citizens were regulated, and the question of legal aid, all in connection to the civil procedure code. The importance of residential and habitation also arises in connection to the topic. Who could be the subject of a civil action? How does the civil procedure code refer to the extraterritorially? In the course of my lecture, I do not want only to analyze the results of the specialized literature of legal science, but also want to support my point of view with legal cases.

Maja Zajac

Ph.D. Student, University of Wroclaw, Poland

Legal Regime of Shipwrecks – Private Property, State Ownership or Underwater Cultural Heritage?

The legal regime applicable to sunken vessels is to be identified in the United Nations Convention on the Law of the Sea (UNCLOS), which is assessed by legal doctrine as fragmentary and of little practical importance. Whereas the preceding legal instruments – Geneva Conventions 1958 – did not explicitly deal with maritime cultural property, concerned as an emerging area of international law of the sea, UNCLOS introduced articles 149 and 303 addressing marine archaeology. The former one, applicable to the seabed and subsoil beyond national jurisdiction (Area), qualifies ‘objects of archaeological and historical nature’ as the benefit of mankind as a whole. Simultaneously, it guarantees the preferential rights to the state of origin, of cultural origin and of archaeological and historical origin. Due to the lack of a definition of the abovementioned ‘objects’, strenuous efforts to balance the interest of mankind and ‘states of origins’ and paucity of International Seabed Authority’s competencies in relation to their management and conservation, the created regime is not in conformity with international reality. Meanwhile, article 303, confirming the umbrella character of UNCLOS, obliges States to cooperate and protect maritime cultural property, establishes a controversial *fictionis juris* in the contiguous zone and overarching status of the law of salvage and other rules of admiralty. Its operation is suspended in the presence of ownership claim, which forces state’s judiciary to adjudge who the proper owner is: the finder, the state under whose flag a sunken vessel originally sailed, the culture from which the wreck and its cargo originated from or mankind as a whole. Furthermore, according to customary law the maritime cultural property situated seaward of the territorial sea boundary is governed by the freedom of high seas, favouring the first-come-first-served approach.

As a result of UNCLOS legal vacuum threatening the protection of shipwrecks, the UNESCO Convention on the Protection of Underwater Cultural Heritage has been adopted with the aim to address the relationship between salvage law and scientific rules of protection, conservation and management of maritime archaeology. Even though the law of salvage and law of finds were rejected and the first-come-first-served approach was excluded, the controversies concerning the ownership remain (especially due to the dispositive nature of mentioned rules). The purpose of my presentation is to assess whether

the UNESCO treaty instrument is able to effectively address questions of ownership, management and protection of maritime cultural property, despite its ambiguity regarding governmental vessels entitled to sovereign immunity, plausible extension of coastal state jurisdiction in the EEZ and Continental Shelf and equilibration of the commercial and cultural interests?

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Contractual Freedom and the Corporate Constitution; a Study on Where Greek Law Stands in a Comparative Context and the Way Forward

Following the recent internationalised financial crisis, there is a recurrent academic and legislative interest in the field of shareholder rights protection; particularly because of the latter being considered essential for shareholder engagement, as evidenced in roundtable debates, proposed and recently introduced legislation. Focusing on rights attached to publicly traded shares, comparative studies provide useful insights on the level of protection available in each jurisdiction; often assessing the competitiveness the law in force has in an international context. What seems to be overlooked though in the relevant literature is the role the corporate constitution assumes as a source of rights. This paper constitutes part of an ongoing comparative study on the protection of shareholders under corporate law. Its subject is the discretion provided by the German, Greek and UK legal frameworks to formulate rights connected with corporate membership by drafting and amending the articles of association. The methodology applied serves the purpose of providing an evaluative opinion on how the legislations therein examined address the matter. The findings of this research illustrate significant differences between the Common Law (on the one hand) and Continental Law (on the other hand) approaches; reflecting their divergent theoretical underpinnings (contractarianism and concession theory). However, this paper welcomes a notable yet hesitant reform of Greek Corporate Law resulting in a departure from its version of the principle of “stringent law” (Satzungsstrenge); a principle that still permeates the German Law on public limited companies. Those conclusions are followed by the suggestion that a more decisive move towards flexibility would be beneficial. The problem of mandatory provisions becoming obsolete could thereby be addressed without recourse to the legislature and the detrimental effect the one-size-fits-all approach adopted by the existing legislation has on SMEs could be mitigated. The British experience offers useful insights towards that direction.