

2016

Law Abstracts

Thirteenth Annual International
Conference on Law,
11-14 July 2016, Athens, Greece

Edited by Gregory T. Papanikos

THE ATHENS INSTITUTE FOR EDUCATION AND RESEARCH



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First Published in Athens, Greece by the Athens Institute for Education and
Research.

ISBN: 978-960-598-095-5

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8 Valaoritou Street
Kolonaki, 10671 Athens, Greece
www.atiner.gr

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Preface

This abstract book includes all the abstracts of the papers presented at the 13th Annual International Conference on Law, 11-14 July 2016, Athens, Greece, organized by the Athens Institute for Education and Research. In total, there were 25 papers and 27 presenters, coming from 13 different countries (Australia, Brazil, Colombia, Cyprus, Germany, Israel, Lithuania, Romania, South Africa, South Korea, UAE, UK, USA). The conference was organized into eight sessions that included areas such as Legal Systems, Legal Profession and Legal Education, Corporation Law and other related fields. 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 six research divisions and twenty-seven 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
6th Annual International Conference on Architecture
4-7 July 2016, Athens, Greece

Conference Venue: [Titania Hotel](#), 52 Panepistimiou Street, 10678 Athens, Greece

Monday 11 July 2016

(all sessions include 10 minutes break)

08:00-08:30 Registration and Refreshments

08:30-09:00 Welcome & Opening Address (ROOM B--Mezzanine Floor)

- Gregory T. Papanikos, President, ATINER.
- George Poulos, Vice-President of Research, ATINER & Emeritus Professor, University of South Africa, South Africa.

09:00-10:30 Session I (ROOM A--Mezzanine Floor): Legal Systems

Chair: David A. Frenkel, LL.D., Head, Law Research Unit, ATINER & Emeritus Professor, Guilford Glazer Faculty of Business and Management, Ben-Gurion University of the Negev, Beer-Sheva, and School of Law, Carmel Academic Centre, Haifa, Israel.

1. Douglas Frenkel, Professor, University of Pennsylvania, USA. Improving Lawyers' Judgment: Is Mediation Training De-Biasing?
2. *Michael Burnett, Judge, District Court, Queensland, Australia. Does the ADF Require a Chapter III Military Court?
3. *Vasileios Adamidis, Lecturer, Nottingham Trent University, U.K. Inequality of Resources and Equality before the Law: Adversarial Justice in Classical Athens.
4. *Dominic De Saulles, Senior Lecturer, Cardiff University, U.K. What was Woolf Thinking?

10:30-12:00 Session II (ROOM A--Mezzanine Floor): Legal Systems/Gender

Chair: *Ronald C. Griffin, Professor, Florida A&M University, USA.

1. *Hernan Olano, Director, Faculty of Philosophy and Human Sciences, University of La Sabana, Colombia. Similarities and Differences between Administrative Procedure Laws of the People's Republic of China and Colombia.
2. *Thomas Corbin, Assistant Professor, American University in Dubai, UAE & Godfrey Langtry, Lecturer, University of Technology Papua New Guinea, Papua New Guinea. The Non-Usage of Jury Trials in Papua New Guinea.

12:00-13:30 Session III (ROOM A--Mezzanine Floor): Legal Profession and Legal Education

Chair: *Thomas Corbin, Assistant Professor, American University in Dubai, UAE

1. Jason Tucker, Reader in Law / Associate Dean, Cardiff University, U.K. Graduate Employability – How can Universities best Meet Student Expectations?
2. *Michael P. Malloy, Distinguished Professor and Scholar, University of the Pacific, USA. Encountering Utopia: Social Stresses and Responsibilities of the Lawyer.
3. Efthimios Parasidis, Associate Professor, The Ohio State University, USA. Sovereign Immunity, State Secrets, and the U.S. Military Biomedical Complex.
4. *Anna Chronopoulou, Senior Lecturer, London School of Business and Management (LSBM), U.K. The Unpopularity of Property Law Modules Among the Student Population: Reasons and Solutions.

13:30-14:30 Lunch

14:30-16:00 Session IV (ROOM A--Mezzanine Floor): Corporation Law

Chair: *Allen Shoenberger, Professor, Loyola University Chicago, USA.

1. *Fiona Martin, Associate Professor, UNSW Australia, Australia. Accountability and Transparency of Charities in New Zealand and Australia: The Rise and Fall(?) of two Charities Commissions.
2. Paulius Miliuskas, Lecturer, Vilnius University, Lithuania & Valentinas Mikelenas, Professor, Vilnius University, Lithuania. Impact of Financial Crisis on Director's Liability: Lithuanian Experience In Comparative Perspective.
3. *Thomas Papadopoulos, Lecturer, University of Cyprus, Cyprus. Supervision of Takeovers in Cyprus Company Law: The Role of the Cyprus Securities and Exchange Commission.
4. Lavinia Olivia Iancu, Lecturer, Tibiscus University, Romania. A New Face of the Insolvency Law.

21:00-23:00 Greek Night and Dinner (Details during registration)

Tuesday 12 July 2016

08:00-11:00 Educational and Cultural Urban Walk Around Modern and Ancient Athens (Details during registration)

11:00-12:30 Session V (ROOM A--Mezzanine Floor): Corporation Law/Human Rights

Chair: *Anna Chronopoulou, Senior Lecturer, London School of Business and Management (LSBM), U.K.

1. *Allen Shoenberger, Professor, Loyola University Chicago, USA. Punishment for Unjust War: First International Court Decision Awarding Damages for Aggression: Will it be Enforced?
2. Kyong-son Kang, Professor, Korea National Open University, South Korea. Sovereign Person in View of the Abolition of Slavery.
3. *Claudia Ribeiro Pereira Nunes, Professor and Researcher, Veiga de Almeida University, Brazil. The Brazilians Companies Internalization on XXI Century: Case Study.
4. Bradley Smith, Associate Professor, University of the Free State, South Africa. Trusts and "Veil Piercing" at Divorce: Towards a Principled Approach in South African Law.

12:30-14:00 Session VI (ROOM A--Mezzanine Floor): Social Justice and Social Security

Chair: *Thomas Papadopoulos, Lecturer, University of Cyprus, Cyprus.

1. *Ronald C. Griffin, Professor, Florida A&M University, USA. Precis about Welfare.
2. Assaf Meydani, Associate Professor, The Academic College of Tel-Aviv, Israel. The Right to Enjoy a Decent Lifestyle in Israel: Encouraging Disabled People to Work The Case of the Laron Law – National Insurance Law (Amendment 109), 2008.
3. *Anri Botes, Senior Lecturer, North West University, South Africa. Maternity Leave in Terms of Section 25 of the Basic Conditions of Employment Act: Unfair Gender Discrimination or Not?
4. *Ivan K. Mugabi, Research Student, Cardiff University, U.K. Followers and Failures of the Disability Individual Complaints in the Same European Union (EU) Family.

14:00-15:00 Lunch

15:00-16:30 Session VII (ROOM A--Mezzanine Floor): Criminal Law/Environment/Health Protection

Chair: *Michael P. Malloy, Distinguished Professor and Scholar, University of the Pacific, USA.

1. Lidia Xynas, Director, Teaching and Learning, Victoria University, Australia. Using Taxation in the Fight against the World Obesity Epidemic. (Tuesday July 12, afternoon session)
2. Mirko Bagaric, Professor, Deakin University, Australia. The Incarceration Crisis in the United States and Australia: Causes and Solutions. (Tuesday July 12, afternoon session)
3. Kleoniki Pouikli, Ph.D. Candidate, University of Heidelberg, Guest Researcher (DAAD and State Scholarships Foundation-SIEMENS Scholarships), Germany. The Polluter-Pays-Principle and the State aids for Environmental Protection.

21:00-22:30 Dinner (Details during registration)

Wednesday 13 July 2016
Cruise: (Details during registration)

Thursday 14 July 2016
Delphi Visit: (Details during registration)

Vasileios Adamidis

Lecturer, Nottingham Trent University, UK

Inequality of Resources and Equality before the Law: Adversarial Justice in Classical Athens

By reference to classical Athens, this paper aims to contribute to the current intellectual ferment for the reform of adversarial systems of justice. The basic principle of these systems is that the parties should prepare and present their case in an entirely partisan fashion. This fierce legal 'fight' between the adversaries is - allegedly - able to unearth a wealth of evidence which facilitates the detection of the facts. Subsequently, the court, as an impartial umpire, applies the law and delivers its verdict. Truth has been discovered and justice has been served.

However, the inequality of resources between the parties causes a crack to the aforementioned ideal model. In a system lacking the state-funded neutral inquisition mechanisms for the discovery of all relevant evidence, lack of legal aid or incompetence of lawyers and litigants can prove destructive as to the fair outcome of cases. Imbalance of means gives rise to inadequate legal representation and, as a result, inequality before the law. This fact has been one of the major inherent defects of adversarial systems of justice.

The classical Athenian legal system, the archetype and an extreme version of adversarial legal systems, came across the same problem. Lacking the wealth and the will to follow an inquisitorial approach, the Athenians had to make a choice between permitting the inequality of litigants' power and promoting a 'levelling down' type of equality before the law. They opted for the latter. It may be argued that this was done at the expense of truth and justice. Notwithstanding the sophisticated mechanisms of the Athenian polis to prevent such drawbacks, this comment, although anachronistic in some respects, is largely fair. Yet, the priorities were set and the choice was made: absolute democracy and extreme egalitarianism should be promoted by all means.

Mirko Bagaric

Professor, Deakin University, Australia

The Incarceration Crisis in the United States and Australia: Causes and Solutions

Incarceration levels are increasing at alarming levels in many developed countries, including the United States and Australia. The increase is so significant that the fiscal burden of mass incarceration is putting an intolerable fiscal strain on many governments. No tenable solutions to reducing incarceration levels have been advanced. This paper establishes that there is no demonstrable benefit from mass incarceration and proposes reforms to lower imprisonment numbers, while enhancing community safety.

Anri Botes

Senior Lecturer, North West University, South Africa

**Maternity Leave in Terms of Section 25 of the Basic
Conditions of Employment Act:
Unfair Gender Discrimination or Not?**

M I A v State Information Technology may have opened a door to fathers to claim for 'maternity leave' in terms of section 25 of the BCEA. In this matter a male employee in a civil union was refused 'maternity leave' to take care of the baby he received through surrogacy, because it was according to the employer only to the disposal of female employees for purposes of their health and well-being shortly before and after giving birth. After the applicant claimed, among others, gender discrimination, the judge in the Labour Court in effect granted the applicant paid 'maternity leave', stating that there is no reason why an employee *in the applicant's position* (being in a civil union and who had a child through surrogacy) should not be able to claim for 'maternity leave'. The judge however did not discuss the matter of discrimination on any of the grounds, but solely focused on the interests of the child to justify his decision. The abovementioned judgement can therefore find wider application and is not only limited to matters regarding civil unions and surrogacy. Any father should now be able to claim leave in terms of section 25 if he can prove that it is in the best interest of the child. The ILO supports this, providing for men taking leave similar to maternity leave (although not paternity leave *per se*) in various instruments. Claiming 'maternity leave' in terms of section 25 by making the argument above should however not have to be a father's course of action. Given the recognised purpose of section 25, one can argue that it is reasonable and justifiable to limit it to female employees. Nevertheless, male employees could claim unfair gender discrimination on the *general provision* for adequate leave only to women for purposes of the birth of their child (being entitled only to 3 days paid family responsibility leave themselves) while the father also has a role to fulfil. The South African labour law should seriously think about true and appropriate paternity leave or adequate parental leave to address this inequality.

Michael Burnett

Judge, District Court, Queensland, Australia

Does the ADF Require a Chapter III Military Court?

It is well settled that service tribunals exercise power of a judicial nature in the determination of disciplinary proceedings but do not exercise the judicial power of the Commonwealth. Accordingly service tribunals are not required to be constituted under Chapter III of the Constitution.

The paramount service tribunal, the courts martial, had its genesis in English law which has evolved since the 1650s. Australia and many nations allied to it inherited the courts martial model from the UK. The inherited model has recently been reviewed in Canadian and European courts following complaints that its form contravened modern human rights conventions.

Australia attempted to address these concerns with reform to the Australian courts martial processes via the Defence Legislation Amendment Acts in 2003, 2005 and 2006.

These reforms principally sought to separate out and render independent each of the principal pillars of the courts martial system, functions which were formerly undertaken solely by a convening authority.

The separation involved the creation of an independent prosecutor (Director of Military Prosecutions) with power to prefer and prosecute offences; a Registrar of Military Justice with power to appoint a time and place or conducting a courts martial, including appointment of court martial members; a Chief Judge Advocate (CJA) to manage the provision of judge advocates who are appointed by the Judge Advocate General (JAG) to hear the cases; and an independent reviewing authority linked into the chain of command to review the courts martial proceedings and determine whether the trial proceedings should be confirmed and actioned.

The 2006 amendments sought to create a non-Chapter III court, the Australian Military Court (AMC), as the principal service tribunal. In *Lane v Morrison* the AMC was declared unconstitutional as a court not created under Chapter III of the Constitution but which purported to exercise the judicial power of the Commonwealth.

Following the striking down of the AMC, government has struggled to settle upon a model that addresses the one matter that now remains outstanding from a convention perspective, namely the provision of an independent military discipline tribunal.

Government's initial response to *Lane v Morrison* was to create a Chapter III Military Court. However, informed consideration has identified risk with that model. First, its members cannot be members of the ADF. The Court will have the appearance of a civilian court no matter how it is styled. Second, there is a risk that service members before the court may successfully claim a right to s 80 trial by jury notwithstanding the styling of offences as services offences. That might occur because the civil equivalents of many service offences are indictable in character. Thirdly, there will be a need to retain the extant courts martial system because of difficulties with the deployability of a Chapter III court and its judicial members.

The former courts martial system has been reinstated. However, arguably its current form does not adequately address safeguards for judicial independence.

It is apparent the courts martial system can be appropriately reformed to preserve it as a discipline system but also to address the outstanding issue of the independence of its judicial officers.

Those reforms would include:

- 1) Establishment of a standing Courts martial Tribunal;
- 2) Appointment of Chief Judge Advocate (CJA) by the Governor-General;
- 3) Qualification for appointment of CJA to be identical to those of the JAG;
- 4) Appointment of a Judge Advocate Administrator to provide administrative assistance to the CJA
- 5) Appointment of Judge Advocates (JA) by the Governor-General;
- 6) Qualification for appointment of JA to include the appointee hold a judicial commission in a federal or state court;
- 7) Appointment of a Judge Advocate Administrator to assist the CJA in administration of the JA s.
- 8) Review of courts martial proceedings be reformed to streamline and channel concerns arising from courts martial proceedings to the DFDAT for advice to the reviewing officer.

This paper examines the recent history of the ADF Courts Martial system and explains why the suggested reforms may bridge the lacuna between those who see only a Chapter III solution and those who contend the current model is satisfactory.

Thomas Corbin

Assistant Professor, American University in Dubai, UAE

&

Godfrey Langtry

Lecturer, University of Technology Papua New Guinea,
Papua New Guinea

The Non-Usage of Jury Trials in Papua New Guinea

This paper is designed as a comment on the non-usage of Juries in trials in Papua New Guinea (PNG). PNG is a former colonial holding of Great Britain that was administered by Australia. Both Australia and Great Britain make use of juries in both criminal and civil trial. It is therefore interesting that PNG did not adopt this practice though it did adopt in great part much of the other practices in the now mixed system that uses both Common Law and customary law. This review takes a short historical look at the legal system of PNG after decolonization and then discusses the theories behind non-jury use, what practicalities if any exist for the introduction of the practice before outlining an assessor style alternative that is occasionally used in neighboring island nations.

Anna Chronopoulou

Senior Lecturer, London School of Business and Management (LSBM),
UK

The Unpopularity of Property Law Modules Among the Student Population: Reasons and Solutions

The commodification of Legal Education and the popularity of law as a subject of study have been reflected in a plethora of law courses at undergraduate and postgraduate levels on offer in the English Universities. Despite the popularity of certain programmes and subjects on offer that comprise the English Law Degrees, Property Law modules remain in the shadows and have never enjoyed the popularity of Criminal Law for example. Despite being slowly changing modules, Property Law modules did not remain unaffected by the commodification of legal education. As a result, Property Law became highly specialised. This was quickly translated and cashed in, in the form of optional modules such as: Succession Law, Housing Law, Landlord and Tenant Law, Construction Law etc. Nevertheless, Property Law modules remain highly unpopular among the student population in the English Universities.

This paper examines the reasons for this by focusing on three parameters. The first parameter focuses on the nature of the subject itself as highly technical, therefore less adventurous and attractive. The second parameter brings forward the suggestion that neither legal educators nor researchers have actually attempted to break away from the monotony of Property Law subjects. The third parameter examines the students' attitude towards Property Law modules. This paper also proposes solutions to the increasing unpopularity of these subjects. It puts forward the suggestion that a socio-legal approach to the subjects combined with appealing forms of popular culture might just increase the popularity of the subjects among the student population.

Dominic De Saulles
Senior Lecturer, Cardiff University, U.K

What was Woolf Thinking?

Cajetan argued that there were three types of justice: legal, distributive and commutative. These types trace the interrelationships between the citizens with each other and with the state but all require a system to deliver them. The civil justice system enables the citizenry to gain substantive justice in private and public law matters. Access to justice is guaranteed by Article 6 of the ECHR. But English civil justice has been plagued for over 100 years by the 'twin evils' of cost and delay to which non-compliance can be added. Thus the citizenry fails to obtain what is promised by the state.

Woolf's official reports were published in 1995 and 1996. The proposals were, to an extent, implemented in the Civil Procedure Rule 1998. It was then thought that Woolf was taking aim at the 'twin evils' and wanted to use the technocracy of management to eliminate them. Sorabji (2014) suggests that the overriding objective which opens the 1998 rules signalled a departure from the established philosophy of justice on the merits. This change was not understood correctly or was understood correctly but resisted.

Litigants' behaviour did not change. The goals of the reform were displaced. The 1998 rules failed in their objective and the civil justice process had to be revisited by the Jackson reports (2009). These reports advised tackling head-on non-compliance by parties.

This paper looks at the text of Woolf's reports to see what Woolf said he was trying to achieve. It is argued that Woolf himself placed his main weight on a technocratic solution and that although speaking of culture change, his aims and proposals were too many and too disparate to be really pulled together into a coherent philosophical statement. The original text of the overriding objective displays that tension.

Douglas Frenkel

Professor, University of Pennsylvania, USA

Improving Lawyers' Judgment: Is Mediation Training De-Biasing?

When people are placed in a partisan role or otherwise have an objective they seek to accomplish, they are prone to pervasive cognitive and motivational biases. These judgmental distortions can affect what people believe and wish to find out, the predictions they make, the strategic decisions they employ, and what they think is fair. A classic example is confirmation bias, which can cause its victims to seek and interpret information in ways that are consistent with their pre-existing views or the goals they aim to achieve. Studies consistently show that experts as well as laypeople are prone to such biases, and that they are highly resistant to change, in large part because people are generally unaware that they are operating.

When they affect lawyers, egocentric, partisan and role biases can hinder the ability to provide objective advice to clients, lead to overly optimistic forecasts about the probability of future events, and promote "we-they" thinking that can exacerbate and prolong conflicts, imposing substantial costs on both clients and society.

There is reason to believe that by placing people in a mediative stance – one in which people impartially try to help disputants resolve a conflict – they can develop habits of objectivity crucial to much of what lawyers are called upon to do. That this is so is supported by social science research on two specific strategies for de-biasing judgment – considering alternative scenarios and taking another's perspective – both core mediator mindsets. Research also shows that active engagement in such de-biasing activity is more effective in achieving objectivity than is mere instruction about the existence of cognitive biases. The authors consider the implications of this research for law school clinical programming and legal education in general.

Ronald C. Griffin

Professor, Florida A&M University, USA

Precis about Welfare

Nations, spending money on knowledge and human intelligence, and governments, pruning welfare systems to wean people off of dependence, face declining revenues to do their domestic jobs and, simultaneously, service refugees and migrants demanding help. This essay grapples with the ugly questions: (1) separating asylum seekers from economic migrants and according them different and humane treatment; (2) addressing the plight of juvenile asylum seekers seeking safety everywhere; (3) coping with depopulation problems across Europe and what immigrations from the Middle East might do to fix the situation; (4) tallying the cost of doing something constructive and, in so doing, fixing the amount western nations should bear while refitting themselves for market based transactions on a global scale. This paper begins with a trove of knowledge about welfare. It reviews vying definitions for that term. It goes over a welfare case in Ireland. It looks at the “troubles” in Europe stirred-up by Syrian refugees. It recounts spectacles in the United States and, thereafter, proffers some solutions.

Lavinia Olivia Iancu
Lecturer, Tibiscus University, Romania

A New Face of the Insolvency Law

In recent years, the Romanian legislation went through a vast modernization process with special attention paid to the insolvency area. Thus, in June 2014 Law no. 85/2014 on prevention of insolvency and insolvency procedures (unofficially named Insolvency Code) entered in force. It regulates the insolvency of professionals, insolvency of the company group, lending institutions, insurance companies and the cross border insolvency. Given the over-regulation of insolvency of merchants, it was mandatory that the insolvency of natural persons be regulated as well.

That desideratum was fulfilled after many years of pro and con debates, which materialized in 3 rejected draft laws, with the passing on June 26, 2015 of Law no. 151/2015 on the insolvency procedure of natural persons, which would enter in force 6 months after its publication, on December 26, 2015.

By simply reading the law, some clerical errors can be noticed, provisions that lack clarity or that can be construed in various ways, and lack of definitions of some used terms but all those aspects, which might bring difficulties to any insolvency practitioner, but all those aspects will be removed with the passing of the application methodology.

Despite the vast criticism that could be brought to the legal text, it must be noticed that the Romanian Parliament attempted for the first time in the modern history to regulate the over-indebtedness of natural persons, providing also solutions for their financial recovery.

Kyong-son Kang

Professor, Korea National Open University, South Korea

Sovereign Person in View of the Abolition of Slavery

The purpose of my paper is to reveal the life pattern of the Constitutional Law by delving into the slave systems which had survived for long in England and America. Both countries are champion states of democracy as well as economy. England above all established the modern Constitution with principles such as the rule of law and parliamentary system. This glory was mainly due to the successful mercantilism. The major source of national wealth at the time was slavery. Slave system might be inevitable for economic reasons, but it could not escape blame for being unlawful. It was destined to be abolished according as liberalism and capitalism advanced. England set an example to abolish the slave trade and slave system for the first time in Europe. USA, as it inherited the slavery during the British colonial period, was faced with the task to end the diehard unlawful practice. However, slave system which survived in the South until the Independence and the framing of the Constitution incurred constitutional cracks and instability. Abolition of slavery, that was to say the normalization of the constitution, came through the tragic Civil War.

After the abolition, racial discrimination, a rather radical issue, was brought to the surface. Originating from deep-rooted emotion or sense of identity, racial discrimination can only be eliminated very slowly and with uncertainty. Unconstitutional institution as well as unjust and wrong culture can be done away with by concerted efforts of the community. Those efforts equal the growing-up of 'sovereign person', that is the very type of citizen the democratic and republic constitutional law prescribes. The sovereign person is a person of both strong will to the Constitution and capability to realize it.

Constitutional Law can be compared as Cultural Heritage of Humanity. It has been gradually constructed by every sovereign person in the long history of humankind. This paper is focused to elucidate the concept and importance of sovereign person by reviewing the slave system from the start to the end and after in England and USA.

Michael P. Malloy

Distinguished Professor and Scholar, University of the Pacific, USA

Encountering Utopia: Social Stresses and Responsibilities of the Lawyer

The year 2016 is the quincentennial of the publication of Thomas More's *Utopia*. This paper provides a legal and literary critique of the novel, an important literary milestone and cultural artifact. *Utopia* represents a significant marker in the history of political and legal philosophy. It also provides an important contribution to the law and literature movement that has flourished in recent decades. The paper examines the role of law in society as reflected in *Utopia*. The common understanding of the book is that it attempts to argue for an optimal arrangement of society illustrated by the depiction of the ideal country of Utopia. The paper argues that, properly interpreted in light of suggestions More leaves for the reader in an introductory "letter," the book is about the life of the law and the social stresses and responsibilities of the lawyer, and that Utopia itself is far from ideal.

Fiona Martin

Associate Professor, UNSW Australia, Australia

Accountability and Transparency of Charities in New Zealand and Australia: The Rise and Fall(?) of two Charities Commissions

The regulation of organised civil society can be justified by reference to (a) preventing anti-competitive practices, (b) controlling campaigning, (c) ensuring accountability, (d) coordinating the sector, (e) rectifying philanthropic failures; and (f) preventing the erosion of key structural characteristics (see Garton 'The Future of Civil Society Organisations'). The New Zealand charitable sector argued for many years that it was important to establish a Charities Commission to oversee and regulate the charities sector. The rationale was that charities involved in fraud, tax avoidance, and the like, could be 'weeded out', and the public could have trust and confidence in those that remained. In 2005, New Zealand established a Charities Commission. In 2012, again after many consultations with the charities and not-for-profit (NFP) sector (eg Industry Commission (1995); Senate Standing Committee on Economics (2008)) Australia also established a similar commission, the Australian Charities and Not-for-profits Commission (ACNC). The Australian Government of the time encapsulated its reform agenda into three main objectives. These were 'to maintain trust and confidence in the NFP sector', to 'protect against the misuse of charitable monies' and to better describe 'the front line delivery of services and benefits' to the community.

Both commissions were empowered to encourage accountability and transparency of charities, enable their registration, make registration and de-registration decisions and require NFPs to comply with certain obligations.

However, in 2012 the New Zealand Commission was disestablished and replaced by a Charities Board. At the same time as the New Zealand Commission was losing its status, the ACNC was also coming under political scrutiny. There was a change in the political party holding government in September 2013 from Labor to a Liberal/National Party Coalition. This is a traditionally conservative political party alliance which brought with it a political agenda of 'reducing red tape'. It considered that this aim would be partially satisfied through abolition of the ACNC. Legislation to this effect was presented to the Federal Parliament in March 2014 however it was defeated in the Senate, The Australian Federal Parliament's Upper

House. The Bill has now been allowed to lapse, but has not been withdrawn.

The paper argues that state regulation is essential to the credibility and transparency of charities and to ensuring that the government subsidies that they receive are appropriately accounted for. It also demonstrates, through an analysis of government policy documents, academic literature and public submissions, that the NFP sector and the public are generally supportive of regulation as long as it is handled appropriately. However, the paper also highlights that establishing a regulator is a highly politicised process. This research has application to other nations that are considering establishing an independent regulator of their NFP sector.

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**The Right to Enjoy a Decent Lifestyle in Israel:
Encouraging Disabled People to Work The Case of the
Laron Law - National Insurance Law (Amendment 109),
2008**

The State of Israel sees itself as a welfare state, which is assessed among other factors by its social and political conduct towards those weaker sections of the population who have to cope with illness and handicaps . however It seemed that the practical application of clause 109 of the National Insurance Law, dated 1995, led to a market failure, which in effect hampered the right of the disabled people in Israel to a decent lifestyle. This article seeks to study this particular area and intends to review the scope of the right to a decent lifestyle in Israel when it comes to the right of the disabled persons' integration in the labor market as implemented in Israel.

This article focuses on the domestic arena. We will consider the actions of several players in the public and political arenas and examine how they functioned within a set of structural and cultural conditions. These conditions include the non-governability of the political system and the special characteristics of civil society in Israel characterized by instrumental democratic values, which attempt to create alternative supply of policy decisions.

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&

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Impact of Financial Crisis on Director's Liability: Lithuanian Experience in Comparative Perspective

The most recent financial crisis brought a devastating blow to major economies around the world. Despite the general negative effects it had on various social, economic and cultural aspects of our lives, the crisis also presented incentives to modernise and improve laws in order to prevent future large scale failures. Company law in this context plays one of the central roles and has seen various changes during this decade. Lithuania is no exception in this trend and has introduced in positive law or developed through case law changes that influence civil liability of company directors.

The article aims at analysing certain elements of director's liability in Lithuania which started to appear during or soon after the financial crisis of 2007-2008. In particular, the authors analyse: 1) general conditions for director's civil liability under Lithuanian law; 2) the prevailing theory of the corporation in Lithuania and its impact on the case law; 3) Lithuanian business judgement rule and its possible evolution after the financial crisis; 4) conditions for director's civil liability when company is facing financial difficulties or bankruptcy; and 5) peculiarities of Lithuanian case law regarding internal and external director's functions and their impact on the liability regime. All of the points above are analysed from comparative perspective taking into account both the European developments and common law doctrines that had or might have influence on further developments of company law in Lithuania.

The article starts with a general introduction into Lithuanian director's civil liability regime by providing rules and case law on all conditions that must be satisfied before the court in order to hold a director liable. Furthermore, the authors discuss case law developments and inconsistencies under Lithuanian law in applying shareholder primacy, stakeholder or rational shareholder theories on the duties of directors. Currently, there is no predominant view in Lithuania which theory should be applied when deciding director's civil liability cases and this greatly impacts differing and even contradicting court decisions. Thirdly, although the business judgement rule is one the most important corporate law doctrines, Lithuania has only recently introduced such rule through case law. It is still being developed and it

is early to say in which direction it is headed. However, comparison with experience and application of such rule in other European countries and the US is crucial for preventing early mistakes in applying business judgement rule.

Fourthly, the article addresses certain aspects of director's liability when the company is facing financial difficulties or bankruptcy procedure is already started. This part predominantly deals with the need to balance the interests of creditors as a whole and interests of particular creditors who suffered damages due to misconduct by the directors. Finally, peculiar duality of director's functions developed by the Lithuanian courts is addressed. For some time have Lithuanian courts distinguished between internal and external functions of company directors and depending on such distinctions applied either rules of civil liability or rules of liability according labour law. The authors aim at briefly discussing whether such case law development is reasonable and what impact it might have on the civil liability regime of directors.

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Followers and Failures of the Disability Individual Complaints in the Same European Union (EU) Family

This piece identifies variances in the conduct of member States with regards to their willingness to accept the application of the individual complaints procedure of the Optional Protocol (OP-CRPD) to the Convention on Rights of persons with disabilities (CRPD). The study goes a step further to examine the legal impacts that this conduct of State might have on the attributes of access to justice by persons with disabilities in both following and failing member States of the CRPD. The implications of having following and failing States Parties to the procedure of individual complaints against State Parties to the Convention on the Rights of Persons with Disabilities. That conduct of States is latter consolidated from the international context and discussed in the perceptive of the various implications this has to persons with disabilities among the EU member States. In that context, on one hand the term follow a CRPD follower is used when referring to a member State in the EU against which persons with disabilities are capable of lodging individual complaints. On the other hand, a failure CRPD State party is used with reference to those members States of the EU that have never accepted the using of the individual complaints mechanism in relation to seeking redress against their actions. In that case Article 1 of the OP-CRPD paragraphs 1 and 2 shall be critically examined though with special attention the members States of the EU. The consequences that might be posted on using of that procedure as enforcement mechanism of disability rights are discussed. Eventually the role of the European Union as one of the Parties to disability instrument is also dealt with the course of this presentation. Issues of upholding State sovereignty and the complications this had of applicability and legitimacy of the individual enforcement among the member States of the EU are afforded deserving attention. The possible ways through which that enforcement problem could be resolved are also briefly pointed out from consideration.

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Similarities and Differences between Administrative Procedure Laws of the People's Republic of China and Colombia

The Administrative law, he enjoys certain "philosophy", which is summarized in "a set of knowledge - reasoned, arranged in a logical harmonic synthesis, in which they are linked and illustrate between yes - of the Administrative law by his beginning and foundations acquired with the natural light of the reason ". And it is so the science of the Administrative law, " it deals preferably <how> it is the same, while his philosophy takes us after his last one <why> and the last one <why>, being applicable the classic definition aristotélic: <cognitio rerum per cause>.

Pursuant to the Constitution, this Law is enacted for the purpose of ensuring the correct and prompt handling of administrative cases by the people's courts, protecting the lawful rights and interests of citizens, legal persons and other organizations, and safeguarding and supervising the exercise of administrative powers by administrative organs in accordance with the law.

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Supervision of Takeovers in Cyprus Company Law: The Role of the Cyprus Securities and Exchange Commission

This paper will analyze the supervision of takeover bids in Cyprus company law. Special emphasis will be given on the relevant case law. The Cyprus Securities and Exchange Commission (CySEC) is responsible for the supervision of takeover bids in Cyprus. This paper will shed light on the supervisory powers of CySEC. Cyprus, as a Member of the European Union, had to implement the EU Takeover Directive. However, the Takeover Directive is characterized by a complicated optionality and reciprocity system which gives a certain degree of discretion to member states with regard to the transposition of the Directive's provisions into the national legal order. The Takeover Directive was implemented in Cyprus by Law 41(I)/2007 on takeover bids. According to Article 4 of Law 41(I)/2007[Cyprus Takeover Bids Law], the Cyprus Securities and Exchange Commission (CySEC) is the relevant supervisory authority. The CySEC examines potential violations of the Cyprus Takeover Bids Law. Various cases were brought before Cyprus Courts arising from decisions of CySEC concerning the supervision of takeover bids. This paper will focus on Cyprus case law on the implementation of Cyprus Takeover Bids Law. This case law examined various aspects of the regulation and supervision of takeovers in Cyprus: takeover bid documents, exemptions from the obligation for a takeover bid (mandatory bid), applications to exercise the right of squeeze-out and sell-out, monitoring the compliance with other specific provisions of the Cyprus Takeover Bids Law, squeeze-out and the sell-out rights, infringement of mandatory bid rules (sanctions and arguments of maladministration), cash consideration for takeover bids, collection of information and identifying "persons acting in concert". This paper will criticize this case law. Useful conclusions on the supervision of takeover bids will be drawn.

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Sovereign Immunity, State Secrets, and the U.S. Military Biomedical Complex

The twenty-first century is quickly taking shape as the age of the biomedical military. As the U.S. Department of Defense (“DoD”) candidly states, one of its primary goals is to exploit the life sciences to create soldiers with superior physical, physiological, and cognitive abilities. Projects include: (1) developing drugs that can reduce fear, increase aggressiveness, or keep individuals awake and alert for up to seven days straight; (2) genetically engineering the human immune system so that it is able to recognize and adapt to any pathogen; (3) creating implantable electrodes that permit human-to-human and human-to-computer communication via thought alone; and (4) establishing human-to-computer interfaces that are able to detect a person’s neurological state and release neurochemicals that can combat fatigue, enhance mood, suppress or improve memory, or facilitate learning.

While U.S. laws governing research with human subjects apply to civilian and military research, other legal doctrines within the national security law framework – notably, sovereign immunity and the state secrets privilege – afford the U.S. government with legal immunities in the event of research-related injuries to military personnel. Courts have interpreted these doctrines broadly to encompass claims raised by service members who suffered severe injuries after military officials locked them in gas chambers and exposed them to mustard gas against their will, as well as soldiers who were harmed by coerced or compelled participation in the military’s atomic experiments and the DoD’s clandestine LSD and psychotropic drug experiments. In each case, since the conduct occurred while the soldiers were subject to military command, the state immunities served to foreclose legal remedies. And, in defending its decisions, the government argued that the studies and research methods were necessary to further the strategic advantage of the United States.

Using contemporary and emerging research as a frame, this project examines the development of these state immunities and the impact of the immunities on military personnel. I then suggest reforms that aim to harmonize national security with principles of bioethics and the rights of members of the armed forces.

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The Polluter-Pays-Principle and the State aids for Environmental Protection

The "Polluter Pays Principle" (PPP) -cornerstone of the international as well as the European environmental law- presents a complicated and multifaceted nature as instrument of environmental protection. Hence, it constitutes the background for several instruments of European environmental policy such as the environmental responsibility, the environmental taxes and the "green fees", the control of State aids, the system of "tradable permits", the regulation concerning the "Eurovignette". Particularly, with regards to the State aids in the environmental area the PPP has a very crucial role in the framework of the policy developed on this issue by the European Commission. In general, given that the PPP provides for that the polluting undertakings shall bear the costs of their pollution reduction investments, it is clear at first glance that this principle imposes a general prohibition of granting State aids for compliance with the environmental regulations in order not to distort the competition and the function of the internal market. However, the analysis of the EU Guidelines on State Aids for environmental protection, the practice of decisions of the European Commission as well as the judgments of the Court of Justice of the European Union reveal a different -broader approach- of the PPP. Hence, the aim of this paper is to explore the role of this principle at the crossroads of the policy on controlling State aid for environmental protection.

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The Brazilians Companies Internalization on XXI Century: Case Study

Brazil has a traditional development and the country is going through economic crisis in recent years, as most of the countries on world. In this context, some Brazilian companies have been launching abroad to reach new markets. It justifies the interesting of to understanding what is internalization legal analysis with a case study of one successful corporate holding structure. The author choice Marco Polo Company. This Company began in 1949 in the city of Caxias do Sul, state of Rio Grande do Sul (RS), when it was called Nicola & Cia. and has grew every year from 1949 to 2014. This is an empirical study of the company. The Marco Polo Company - the internationalization hypothesis as a case study - turn into a world reference in bodybuilding bus. Nowadays, the Marco Polo Company reached the internalization implanted on all five continents of the world, saving Europe. This company has partners and companies on China, India (Asia) Egypt, South Africa (Africa), Argentina, Colombia, Mexico (America) and Australia (Oceania). The general aim of the study has two sides: (i) the economic analysis with the framing of the model within the major economic theories; and (ii) the legal analysis indicating the corporate expedients chosen for the internationalization of the company under analysis. The specialies aims are: (i) recounting the history of the Company Marco Polo; and (ii) the economic analysis submit a brief of the Theory of Life Cycle of Products, Behavioral, particularly the models: Born Global, Uppsala, and Behavioral and Economic Theory, particularly the model Eclectic Paradigm, highlighting the legal tools chosen during its evolution towards internationalization. The methodology is bibliographic review of the important literature of this theme, the secondary data from Brazilian and foreign official websites and an empirical development - case study. This study is a work from Research Line 2 - State, globalization and citizenship - on Research Project: Economic development, globalization and sustainability.

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Punishment for Unjust War: First International Court Decision Awarding Damages for Aggression: Will it be Enforced?

The European Court of Human Rights has issued two decisions, one on the merits another on just satisfaction involving the intervention by Turkey in Cyprus. The most recent decision awarding Cyprus 90 million euro in damages, including punitive damages, is an important international court decision.

As a Joint Concurring Opinion states: “THE PRESENT JUDGEMENT HERALDS A NEW ERA IN THE ENFORCEMENT OF HUMAN RIGHTS . . . AND MARKS AN IMPORTANT STEP IN ENSURING RESPECT FOR THE RULE OF LAW IN EUROPE,

Establishment of an international legal obligation to pay damages for acts of war against another nation state pursuant to the European Convention for the Protection of Human Rights and Freedoms is a seminal judicial decision.

Several important international legal norms are central to this decision, including:

- A nation state may sue for, and recover damages for, injuries to that state’s own citizens or subjects.
- Exemplary damages, or what the United States calls, punitive damages, are awardable against a miscreant nation state.
- Claims for just satisfaction are not barred by the passage of time, even substantial amounts of time. In the instant case, the original action that was commenced in the ECHR began in 1994, but concerned actions taken by Turkey in northern Cyprus in July and August, 1974, gave rise to a just satisfaction decision in 2014.
- It is the obligation of the prevailing nation state to convey the damages to its own citizens, not merely as a matter of grace but as of right.

The issue now, is whether that decision can be enforced against a recalcitrant nation state, or whether the decision will end up as ineffectual as the long distant League of Nations ineffectual defense of Ethiopia.

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Trusts and “Veil Piercing” at Divorce: Towards a Principled Approach in South African Law

In South Africa, as in other comparable jurisdictions such as the United Kingdom, the United States and Australia, it is an established principle of company law that the company’s separate existence may be disregarded in the event of abuse of its juristic personality. As such, liability may be fixed elsewhere for acts that were ostensibly those of the company. This process is metaphorically described as “piercing the corporate veil”. In South Africa, this power was traditionally exercised as a power derived from the common law. Since the enactment of the Companies Act 71 of 2008, it is regulated by statute. Importantly, the new statutory provision is viewed as supplementing, rather than superseding, the common law power. In particular, the flexible definition in the statute has been held by our courts to depart from the long-held view that piercing is an “exceptional” or “drastic” remedy that may only be exercised when no other alternative remedy is available to a litigant. This flexible approach can be sharply contrasted with the approach in English law which, by virtue of the leading judgment in *Prest v Petrodel* [2013] UKSC 34, has severely curtailed its application.

In recent years, the question has arisen as to whether the principles applicable to piercing the corporate veil are capable of being applied in the context of trust law. This is particularly so where family trusts have been controlled (and exploited) by a trustee-spouse who, at divorce, nevertheless insists on the insulation of property as “trust property” thereby precluding it from being taken into account for the purposes of dividing matrimonial property. Despite the fact that the South African Supreme Court of Appeal recently held that the principles of “piercing” in company law have indeed been “transplanted” into the realm of trust law, there is much confusion as to the nature and scope of this power in divorce cases. A particular problem is that our courts appear to require specific authorisation by divorce legislation before this power may be exercised. This paper argues that this approach evinces a fundamental lack of appreciation (and understanding) of the potentially fruitful interrelationship between the concept of “piercing” (or “lifting”) the “trust veil” on the one hand, and matrimonial property law and the law of divorce on the other. A principled approach, that recognises the common law origins (yet increasingly flexible nature) of this power and applies it in a context-specific manner in view of the obligations

imposed by the matrimonial property regime in question, is therefore mandated.

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Graduate Employability - How can Universities best Meet Student Expectations?

Particularly since the advent of tuition fees, *“UK universities have come under intense pressure to equip graduates with more than just the academic skills traditionally represented by a subject discipline and a class of degree”*. Cardiff University is currently devising an employability strategy to support its students in developing the broad competence profile necessary to make the transition into the world of work. The author is a member of the Pro-Vice Chancellor’s Steering Group responsible for devising the University’s strategy, and leads the implementation of the strategy in the College of Arts, Humanities and Social Sciences, across ten academic Schools and an undergraduate population of nearly 8,000 students. This paper will consider ways in which universities can meet student expectations in relation to their future careers, and will draw upon the experiences of Cardiff School of Law & Politics, which offers a wide range of clinical legal education activities. In particular, consideration will be given to how the School is approaching the task of embedding skills and employability provision into the law curriculum, with particular emphasis on:

- identifying the drivers for increased employability provision;
- overcoming the challenges of introducing skills-based provision at a research-intensive University;
- outlining different models of practice-based/clinical provision, both curricular and extracurricular, which can support the development of employability skills and the securing of graduate level jobs.

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Using Taxation in the Fight against the World Obesity Epidemic

While world famine is a global problem, especially in third world or developing countries, in many western countries an obesity epidemic is presenting a threat to society. Obesity can have negative and detrimental impacts on an individual's health. In addition, negative externalities associated with overweight and obesity are also problematic for society, especially in the provision of scarce public health services. Associated diseases place enormous financial and resource allocation burdens upon a country's health system. Causes of obesity may include a mix of cultural factors, environmental factors, availability of food, food advertising, availability of healthy vs unhealthy food, government policies, individual behaviors, and human biology. These interrelated factors must be addressed together. While the underlying causes of obesity can be complex, the prevention and management of it needs to nevertheless be addressed.

Whether obesity is classified as a disease or not, will have an impact on a government's adoption of any particular obesity policy. This paper argues that a 'fat tax' approach, underpinned by the Pigouvian theory of taxation is one appropriate measure for a society to embrace in its fight against the obesity phenomena. It is postulated that society and individuals may well embrace taxation as a suitable approach when it is combined with other softer paternalistic regulatory policy implementations. For example, the introduction of a food marketing regulatory regime, a food and nutrient register together with the introduction of a 'fat-tax', can give consumers the confidence to make healthy choices in their food consumptions. In this manner, obesity and overweight issues can be addressed positively for individuals and society.