



THE ATHENS INSTITUTE FOR EDUCATION AND RESEARCH

Abstract Book

16th Annual International Conference on
Law

15-18 July 2019, Athens, Greece

Edited by
Gregory T. Papanikos

2019

Abstracts
16th Annual International
Conference on Law
15-18 July 2019, Athens,
Greece

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Preface

This book includes the abstracts of all the papers presented at the 16th *Annual International Conference on Law (15-18 July 2019)*, organized by the Athens Institute for Education and Research (ATINER).

In total 46 papers were submitted by 47 presenters, coming from 22 different countries (Brazil, Canada, Croatia, Cyprus, France, Germany, Hong Kong, Hungary, Italy, Latvia, Luxembourg, Mauritius, Romania, Russia, South Africa, South Korea, The Netherlands, Trinidad and Tobago, Turkey, UAE, UK, and USA). The conference was organized into 11 sessions that included a variety of topic areas such as Business Relations, Corporations and Commerce, Intellectual Property, State and Law in the Interwar Period, Fiscal Law and Trade, Family Law, Social Justice, Patient's Rights, History of Law, Law and Aesthetics, Criminal Responsibility, International Law, Human Rights, Administrative Law, and other. A full conference program can be found before the relevant abstracts. In accordance with ATINER's Publication Policy, the papers presented during this conference will be considered for inclusion in one of ATINER's many publications.

The purpose of this abstract book is to provide members of ATINER and other academics around the world with a resource through which to discover colleagues and additional research relevant to their own work. This purpose is in congruence with the overall mission of the association. ATINER 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 to exchange ideas on their research and consider the future developments of their fields of study.

It is our hope that through ATINER's conferences and publications, Athens will become a place where academics and researchers from all over the world regularly meet to discuss the developments of their discipline and present their work. Since 1995, ATINER has organized more than 400 international conferences and has published nearly 200 books. Academically, the institute is organized into 6 divisions and 37 units. Each unit organizes at least one annual conference and undertakes various small and large research projects.

For each of these events, the involvement of multiple parties is crucial. I would like to thank all the participants, the members of the organizing and academic committees, and most importantly the administration staff of ATINER for putting this conference and its subsequent publications together. Specific individuals are listed on the following page.

Gregory T. Papanikos
President

**16th Annual International Conference on Law
15-18 July 2019, Athens, Greece**

Scientific Committee

All ATINER's conferences are organized by the [Academic Council](#). This conference has been organized with the assistance of the following academics, who contributed by a) setting up the program b) chairing the conference sessions, and/or c) reviewing the submitted abstracts and papers:

1. Gregory T. Papanikos, President, ATINER & Honorary Professor, University of Stirling, UK.
2. David A. Frenkel, LL.D., Head, Law Unit, ATINER & Emeritus Professor, Law Area, Guilford Glazer Faculty of Business and Management, Ben-Gurion University of the Negev, Beer-Sheva, Israel.
3. Michael Malloy, Director, Business and Law Research Division, ATINER & Distinguished Professor of Law, University of the Pacific, McGeorge School of Law, USA.
4. Assaf Meydani, Academic Member, ATINER & Professor & Dean of the School of Government and Society, The Academic College of Tel-Aviv-Yaffo, Israel.
5. Ronald Griffin, Academic Member, ATINER & Professor, Florida A&M University, USA.
6. Kurt Olson, Professor, Massachusetts School of Law at Andover, USA.
7. Norbert Varga, Associate Professor, University of Szeged, Hungary.
8. Thomas Corbin, Academic Member, ATINER & Associate Professor, American University in Dubai, UAE.
9. Miriam Salholz, Associate Professor, St. Francis College, USA.
10. Rashmi Goel, Associate Professor, University of Denver, USA.
11. Jorge Emilio Nunez, Academic Member, ATINER & Senior Lecturer, Manchester Law School, UK.
12. Anna Chronopoulou, Academic Member, ATINER & Senior Lecturer in Equity and Trusts, Westminster Law School, University of Westminster, London, UK.
13. Lavinia-Olivia Iancu, Academic Member, ATINER & Lecturer, Tibiscus University of Timișoara, Romania.
14. Jayoung Che, Academic Member, ATINER & Visiting Professor, Hankuk University of Foreign Studies, South Korea.
15. Charalampos Stamelos, Academic Member, ATINER & Scientific Collaborator, European University Cyprus Law School, Cyprus.
16. Natasa Tomic-Petrovic, Academic Member, ATINER & Associate Professor, Faculty of Transport and Traffic Engineering, University of Belgrade, Serbia.

FINAL CONFERENCE PROGRAM
16th Annual International Conference on Law, 15-18 July 2019, Athens,
Greece

Conference Venue: Titania Hotel, 52 Panepistimiou Avenue, Athens, Greece
(close to metro station *Panepistimio*)

Monday 15 July 2019

07:50-08:40 Registration and Refreshments

08:50-09:15 (Room A - 10th Floor): Welcome and Opening Address by Gregory T. Papanikos, President, ATINER.

09:15-11:00 Session I (Room A - 10th Floor): Law & Literature/Intellectual Property

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

1. Michael Malloy, Distinguished Professor of Law, University of the Pacific, McGeorge School of Law, USA. Encountering the Mysteries of Law and Literature.
2. B. Delano Jordan, Adjunct Professor, University of Maryland Carey Law School, USA. Is Your Idea "Abstract" and Better Yet, Can It Be Patented in the U.S.?
3. Kurt Olson, Professor, Massachusetts School of Law at Andover, USA. Effectively Governing the Internet in a World of Diverse Ideologies: Emerging Technology and the Need for Flexible Funding Security and Copyright Models in an Internet-Enabled Global Economy.
4. Denes Legeza, Head of Unit, Researcher, Hungarian Intellectual Property Office/University of Szeged, Hungary. Copyright Aspects of Life Sciences Innovation.
5. Ozgur Arikan, Lecturer, Istanbul Medeniyet University, Turkey. Trade Mark Exhaustion Regime of Turkey and European Union.

11:00-12:30 Session II (Room A - 10th Floor): Corporations, Commerce, Property and Business Relations

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

1. Susan Exon, Professor, University of La Verne College of Law, USA. Building Trust Online: The Realities of Telepresence for Mediators Engaged in Online Dispute Resolution.
2. Altan Fahri Gulerci, Dr. iur, Afyon Kocatepe University, Turkey, Ayse Kilinc, Afyon Kocatepe University, Turkey & Mehmet Hatipoglu, Afyon Kocatepe University, Turkey. Raising the Consciousness of Mediation in Commercial Disputes.
3. Thomas Corbin, Associate Professor, American University in Dubai, UAE. Addressing Duty of Loyalty Parameters in Partnership Agreements: The More is More Approach.
4. Dubravka Aksamovic, Associate Professor, Head, Department of Business Law, Josip Juraj Strossmayer University of Osijek, Croatia. Transfer of Corporate Seat in EU: Recent Developments.
5. Cornelius van der Merwe, Research Fellow, Emeritus Professor, Stellenbosch University, South Africa. Comparative Perspectives on the Regulation of Short-Term Letting in Condominiums in Five European Cities.

12:30-14:00 Session III (Room A - 10th Floor): State and Law in the Interwar Period

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

1. Mate Petervari, Senior Lecturer, University of Szeged, Hungary. The Practice of the Bankruptcy Act in Hungary in the Interwar Period.
2. Kristina Krake, Lecturer, University of Amsterdam, the Netherlands. Towards Militant Democracy: The 1930s in a Scandinavian Comparative Perspective.
3. Visnja Lachner, Assistant Professor, Josip Juraj Strossmayer University of Osijek, Croatia & Jelena Kasap, Assistant Professor, Josip Juraj Strossmayer University of Osijek, Croatia. The Status and Organization of Croatian Townships under the Act on the Organization of Town Districts of 1895.
4. Charalampos Stamelos, Scientific Collaborator, European University Cyprus Law School, Cyprus. A Case Study of State and Law in the Interwar Period: The Trials of Bishop of Paphos Leontios in Cyprus.
5. Bence Krusoczki, Graduate Student, University of Szeged, Hungary. The Role of the Budapest Chamber of Commerce and Industry Regarding Unfair Competition.

14:00-15:00 Lunch

15:00-16:30 Session IV (Room A - 10th Floor): Fiscal Law and Trade

Chair: Kurt Olson, Professor, Massachusetts School of Law at Andover, USA.

1. Luca Boggio, Professor, Università Cattolica del Sacro Cuore, Italy. The European Regulation No. 848/2015 and the Insolvency Law Reform in Italy: Lights and Shadows.
2. Ronnie Gipson Jr., Assistant Professor, University of La Verne College of Law, USA. International Free Trade Can Remain Viable through the use of Regional Trade Pacts.
3. Lavinia-Olivia Iancu, Lecturer, Tibiscus University of Timișoara, Romania. New Mechanisms for Recovering Budgetary Claims in Insolvency.
4. Paul Naccachian, Visiting Professor, University of La Verne College of Law, USA. India's Path to Economic Growth: Does Industry Level Trade Policies Effect Variation in Economic Growth Pattern?
5. Mihaela Tofan, Professor, JM Chair, "Alexandru Ioan Cuza" University of Iași, Romania. Fiscal Sovereignty or Fiscal Competition in EU Regulation: Theory and Legal Practice Controversy.

16:30-18:00 Session V (Room A - 10th Floor): Family Law/Social Justice/Patient's Rights

Chair: Rashmi Goel, Associate Professor, University of Denver, USA.

1. Frans Mahlobogwane, Senior Lecturer, University of South Africa, South Africa. Child Protection Laws: The Rights of the State v/s Families' Rights, Parents' Rights and Children's Rights.
2. Michely Vargas Del Puppo Romanello, Assistant Professor, Adventist University of São Paulo, Brazil & Jose Geraldo Romanello Bueno, Chairman, Department of Civil Law, Mackenzie Presbyterian University, Brazil. Civil Liability of Heterosexual Couples for Returning Children and Adolescents in the Accommodation Period of the Adoption Process.
3. Jeronimo Romanello Neto, Lawyer, Romanello Neto Lawyers, Brazil & Jose Geraldo Romanello Bueno, Chairman, Department of Civil Law, Mackenzie Presbyterian University, Brazil. The Use of the Fundamental Right to Health for Patients who have Serious and Rare Diseases: Obtaining Treatment and Medicines through the Brazilian Judicial Route.
4. Liga Stikane, PhD Candidate, University of Latvia, Latvia. What Effect Does European Private International Law on Cross-border Divorce Have on National Family Laws and International Obligations of the Member States?

18:00-19:30 Session VI (Room A - 10th Floor): Law and Aesthetics: Bodies, Power and Sexuality/Criminal Responsibility

Chair: Lavinia-Olivia Iancu, Lecturer, Tibiscus University of Timișoara, Romania.

1. Jose Geraldo Romanello Bueno, Chairman, Department of Civil Law, Mackenzie Presbyterian University, Brazil & Michely Vargas Del Puppo Romanello, Assistant Professor, Adventist University of São Paulo, Brazil. Obstetric Violence: Mistreatment during Childbirth and its Legal Consequences in Brazil.
2. Rashmi Goel, Associate Professor, University of Denver, USA. Dementia and Criminal Responsibility.
3. Lydia Katsouli Pantzidou, PhD Student/Visiting Lecturer, Royal Holloway, University of London/University of Westminster, UK. Jekyll, Hyde and the Victorian Construction of Criminal Working-Class Masculinities.
4. Anna Chronopoulou, Senior Lecturer in Equity and Trusts, Westminster Law School, University of Westminster, London, UK. The Favourite and the Unfavourite: Female Sexualities behind Closed Doors.

21:00-23:00 Greek Night and Dinner

Tuesday 16 July 2019

08:00-11:00 Session VII: An Educational Urban Walk in Modern and Ancient Athens

Group Discussion on Ancient and Modern Athens.
Visit to the Most Important Historical and Cultural Monuments of the City (be prepared to walk and talk as in the ancient peripatetic school of Aristotle)

11:15-13:00 Session VIII (Room A - 10th Floor): International Law and International Treaties/Environment

Chair: Thomas Corbin, Associate Professor, American University in Dubai, UAE.

1. Helene Mayrand, Associate Professor, University of Sherbrooke, Canada. Challenging the Legal Concept of 'Safe Third Country' in a North American Context.
2. Jorge Emilio Nunez, Senior Lecturer, Manchester Law School, UK. Sovereignty, Facts and Norms.
3. Marina Mokoseeva, Associate Professor, Mari State University, Russia. Certain Issues of Transformation of Russian Legislation by International Intergovernmental Organizations.
4. Mokshda Pertaub, Director, Institute of Judicial and Legal Studies of Mauritius (IJLS), Mauritius. Increasing Public Trust and Confidence in Environmental Law through Judicial and Legal Training and the Framework of the Specialized Environmental Tribunal - the Mauritius Experience.
5. Rutvica Rusan Novokmet, Postdoctoral Researcher, University of Zagreb, Croatia. Challenges to Strengthen the Protection of Civilians by Non-State Actors in Non-International Armed Conflicts.

13:00-14:30 Session IX (Room A - 10th Floor): History of Law

Chair: Miriam Salholz, Associate Professor, St. Francis College, USA.

1. Russell Miller, J.B. Stombeck Professor of Law, Washington and Lee University School of Law, USA. An Inconvenient History of Judicial Independence.
2. Norbert Varga, Associate Professor, University of Szeged, Hungary. The First World War and Cartel Law in Hungary.
3. Jayoung Che, Visiting Professor, Hankuk University of Foreign Studies, South Korea. Difference in the Status of the Punished Between the Legal Procedure of Ancient Greek Polis and the Criminology of Modern State.
4. Kristof Szivos, PhD Student, University of Szeged, Hungary. Introduction to the Case Management in the Interwar Period of Hungary.

14:30-15:30 Lunch

15:30-17:00 Session X (Room A - 10th Floor): Artificial Intelligence/Administrative Law/Social Justice

Chair: Jorge Emilio Nunez, Senior Lecturer, Manchester Law School, UK.

1. Kimberly Norwood, Professor, Washington University School of Law, USA. The Post-Ferguson Social and Legal Reverberations: Has Five Years Changed the Social Justice Trajectory?
2. Matthew Lewans, Professor, University of Alberta, Canada. Conceptualizing Administrative Law.
3. Claudio Sarra, Associate Professor, Università di Padova, Italy. Relevant Legal Issues for Hybrid Human-Robotic Assistive Technologies: A First Assessment.
4. Peng Han, Senior Lecturer, Lingnan University, Hong Kong. Individualism in Chinese Legislation and its Role in Social Transition – A Durkheimian Approach.
5. Marcus Mathiba, Lecturer, University of South Africa, South Africa. The Effectiveness and Suitability of the National Minimum Wage Act in Eradicating Poverty in South Africa.

17:00-19:00 Session XI (Room A - 10th Floor): Human Rights

Chair: Anna Chronopoulou, Senior Lecturer in Equity and Trusts, Westminster Law School, University of Westminster, London, UK.

1. Pierre Thielboerger, Professor, Ruhr-University Bochum, Germany & Mark Dawson, Professor, Hertie School of Governance, Germany. Implementing the UNGPs in the European Union: Towards the Open Coordination of Business and Human Rights?
2. Miriam Salholz, Associate Professor, St. Francis College, USA. Implementing Human Rights: “Philoxenia” and Teaching Students to Know, Care About and Take Care of the Human Rights of the “Other”.
3. Kerry-Ann Harrison, Course Director/Tutor, Hugh Wooding Law School, Trinidad and Tobago. Human Rights in the Context of the Venezuela Refugee Crisis.
4. Panagiotis Zinonos, Doctoral Researcher and Teaching Assistant, University of Luxembourg and University of Strasbourg, Luxembourg/France. The Duty of Loyalty as a Tool for Fundamental Human Rights Enforcement in the EU Legal System.

20:30-22:00 Dinner

Wednesday 17 July 2019
Mycenae and Island of Poros Visit
Educational Island Tour

Thursday 18 July 2019
Delphi Visit

Friday 19 July 2019
Ancient Corinth and Cape Sounion

Dubravka Aksamovic

Associate Professor, Head, Department of Business Law, Josip Juraj
Strossmayer University of Osijek, Croatia

**Transfer of Corporate Seat in EU:
Recent Developments**

Transfer of corporate seat has been important legal topic in EU law ever since 1980's. While it was clear from the wording of the very first EEC treaties, that companies should benefit from a freedom to establish themselves in another Member State, the extent of this freedom was, more or less, unclear. Some useful guidance with regard to the issue when and under what circumstances a company can transfer its corporate seat and its activities to another Member State, have been given by the CJEU. Every new Court's decision regarding transfer of corporate seat (such as CJEU decisions in case Centros, Inspire Art, Überseering, Daily Mail, Cartesio) had huge echo among corporate lawyers and business and were analysed in the smallest details. The most recent CJEU decision in Polbud case again showed that transfer of corporate seat is topic that still raises number of legal questions.

In that sense, paper will analyse relevant EU legislation applicable to corporate mobility. It will particularly focus on new proposal of the Directive 2017/1132 on cross-border conversion, mergers and divisions and possible impacts of that Directive to transfer of corporate seat (corporate mobility). Special attention will be given to the CJEU ruling in Polbud case in which CJEU had to decide on delicate question as to whether or not companies should be allowed to "change nationality".

Ozgur Arikan

Lecturer, Istanbul Medeniyet University, Turkey

Trade Mark Exhaustion Regime of Turkey and European Union

There is a general rule that trade mark rights are exhausted once the product bearing the registered trade mark has been put on the market by the owner or his/her consent. However, the geographical definition of the term “market” varies from country to country. A country’s regime states the territory where the rights of trade mark holders are exhausted. There are three different exhaustion regimes that countries opt to adapt. These are; national, regional and international exhaustion regimes. The exhaustion doctrine adopted by the European Union is the best important model to the regional exhaustion regime. According to the EU’s free movements of goods principle, trade marked products which have been put on a national market by trade mark right owner or with his/her consent within the European Economic Area (EEA) can be imported and resold by traders without the authorization of the right holder on another national market within the EEA. This regime finds its legal basis on Article 15 of European Trade Mark Directive (TMD) where it states that “a trade mark shall not entitle the proprietor to prohibit its use in relation to goods which have been put on the market in the Union under that trade mark by the proprietor or with the proprietor's consent.” The CJEU’s judgment in *Silhouette* case, where it asked whether the national rules providing for international exhaustion of trade mark rights are contrary to TMD, held that national rules providing for international exhaustion of trade mark rights are contrary to TMD. Turkey is not part of the regional exhaustion regime within the EEA. The exhaustion regime adopted by Turkey was the national exhaustion during the abolished Trade Mark Decree. According to Article 13 of Decree, the acts related with a product bearing the registered trademark shall not constitute a breach of the rights of a registered trademark, where such acts have occurred after the product has been put on the market in Turkey by the proprietor or with his consent. However, the Supreme Court (Yargıtay) in its *Police Sunglasses* judgment allowed the parallel imports from outside of Turkey despite the national exhaustion regime adopted by the Decree. This regime was changed with the Intellectual Property Law (came into the force in 2017) which adopts the international trade mark exhaustion.

Luca Boggio

Professor, Università Cattolica del Sacro Cuore, Italy

**The European Regulation No. 848/2015 and the Insolvency
Law Reform in Italy: Lights and Shadows**

ABSTRACT
NOT
AVAILABLE

Jayoung Che

Visiting Professor, Hankuk University of Foreign Studies, South Korea

Difference in the Status of the Punished Between the Legal Procedure of Ancient Greek Polis and the Criminology of Modern State

In relation to the definition of the cause of crime, it can be divided into three aspects from the end of the 18th century until the middle of the 20th century. Classical Criminology, which tried to approach the concept of crime for the first time in the late 18th century; Positive Criminology, to explain the crime according to the natural science developing since the early 19th century; Critical Criminology, to identify the criminal phenomena based on critical views of political and social systems.

However, this concept of modern criminology does not apply to the ancient Greeks. The punishment for deviant behavior was not equal to the concept of punitive sanction of modern crime but the damage to the individual or the public good, and the 'lawsuit (dike)' assumes mainly a form of private dispute. The 'Ostakismos (deportation)' of politicians does not refer to the usual concept of crime but just the punishment for harming the public interest, or the prevention of damage. At the trial of Socrates, Anytos, the plaintiff, and defendant Socrates were in a quarrel with the accusation of corrupting the youth. In addition, the procedure of punishment was irrelevant to the concept of the crime, but takes the form of a private suit. Because the civil jury only chooses one of the sentences presented by the plaintiff and the defendant respectively

The difference between the ancient Greek polis and the modern state in the status of punished persons is due to the extent of state power. In Greek polis, the procedure of trial and punishment is in the form of a private suit, but in modern countries the pattern and punitive sanction of crime is determined and enforced routinely by state power. What is important is that in modern criminology, the infringement of human rights by state power can occur more easily. In the early stage of the development of modern criminology in the eighteenth century, Cesare Beccaria, the classical criminologist, ordered the judiciary to mechanically apply definite penalties to certain crimes without tolerating their discretion, which is a kind of restraint against the injustice caused by state power.

In conclusion, it is not that the punishment for criminals contributed to the strengthening of state authority, but, in the opposite direction, the strengthening of state power produced the concept of crime and punitive sanction themselves.

Anna Chronopoulou

Senior Lecturer in Equity and Trusts, Westminster Law School, University
of Westminster, London, UK

The Favourite and the Unfavourite: Female Sexualities behind Closed Doors

Much academic ink has been spilt over the way in which female subjectivities and sexualities are constructed in the public domain. Many academic accounts from a number of disciplines have been concerned with this focus for a number of years.

Feminist accounts have always been concerned with issues of female subjectivity construction. Issues of female sexuality have formed huge part of the formation of femininity. Nevertheless, in many respects, the way female sexuality is dealt with in academic accounts is kept strictly within the public domain and usually refers to accounts concerned with the straight, predominant, familiar female sexuality. This paper examines the ways in which female subjectivities and sexualities are constructed within the context of two recent movies “The Favourite” and “Disobedience” by George Lanthimos and Sebastian Leilio respectively. It takes a different view on the construction of female sexualities as it examines it within the context of subcultures and their relation to power, while simultaneously exposing different cultural traits.

Thomas Corbin

Associate Professor, American University in Dubai, UAE

Addressing Duty of Loyalty Parameters in Partnership Agreements: The More is More Approach

In drafting a partnership agreement, a clause addressing duty of loyalty issues is a necessity for modern partnerships operating under limited or general partnership laws. In fact, the entire point of forming a limited partnership is the recognition of the limited involvement of one of the partners or perhaps more appropriate, the extra-curricular enterprises of each of the partners. In modern operations, it is becoming more common for individuals to be involved in multiple business entities and as such, conflict of interests and breaches of the traditional and basic rules on duty of loyalty such as those owed by one partner to another can be nuanced and situational. This may include but not be limited to affiliated or self-interested transactions. State statutes and case law reaffirm the rule that the duty of loyalty from one partner to another cannot be negotiated completely away however, the point of this construct is to elaborate on best practices of attorneys in the drafting of general and limited partnership agreements. In those agreements a complete review of partners extra-partnership endeavors need to be reviewed and then clarified for the protection of all partners. Liabilities remain enforced but the parameters of what those liabilities are would lead to better constructed partnership agreements for the operation of the partnership and the welfare of the partners. This review and documentation by counsel drafting general and limited partnership agreements are now of paramount significance.

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Building Trust Online: The Realities of Telepresence for Mediators Engaged in Online Dispute Resolution

The ability to engender trust is a critical skill for mediators, especially when conducting online dispute resolution whether within the United States or transnationally if disputants reside in different countries. The purpose of this empirical research is to examine the extent to which a mediator can engender trust with the parties when communicating in a video-collaborated environment known as telepresence. Will parties who have never met a mediator prior to the mediation and who communicate solely using telepresence, find the mediator to be trustworthy and trust the mediator to the same extent as those parties who communicate face-to-face with the mediator? Will factors such as age, gender, and educational level significantly affect an individual's ability to trust a mediator? Does an individual's familiarity with, and use of, a video-collaborated environment such as Skype, FaceTime or a similar platform affect an individual's ability to trust a mediator? What is the impact of an individual's predisposition to trust? We analyze data from a small-scale experimental study (N=59), and in this research project conclude that no statistically significant differences exist in the extent to which parties trust a mediator in all contexts and factors.

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International Free Trade Can Remain Viable through the use of Regional Trade Pacts

The European Union was formed after the end of World War II and consisted of six countries. The ideological aspiration at the time was that nations who come together to support each other in trade become interdependent and are less likely to resort to armed conflict to resolve differences. From its humble beginnings in 1951, the European Union grew at its zenith to a twenty-eight member intergovernmental organization (IGO)¹. The model that has framed the growth of the European Union as an IGO perpetuated a transfer of domestic, decision making authority from the member States to a centralized European Union administration. In essence, as time has gone on, the member States have ceded more and more sovereignty to the European Union. This cession of sovereignty triggered deep feelings of resentment in the populations of some of the member States. Over time, the resentment turned into animosity focused towards the European Union Parliament in Brussels. This animosity towards Brussels, has transformed into political movements in some European Union member states fueled by both nationalism and populism.

The main premise advanced in this article is that the member states of the European Union have ceded too much of their sovereignty. As such, the transfer of binding decision making authority jeopardizes the viability of the European Union as an intergovernmental organization in its present form due to the unsustainable levels of dissatisfaction among the citizens of a number of member States, a sentiment which seems to be growing by the day. Part I of this article explores the discord that has been manifested towards Brussels by looking at Britain's Brexit; and at Italy's budgetary crisis as examples.

Then, in Part II, the article examines the structure and organization of the Association of Southeast Asian States (ASEAN), which operates as a regional trade pact instead of as an intergovernmental organization. ASEAN achieves similar objectives as the founders of the European Union intended without an excessive cession of sovereignty, utilizing multilateral agreements and a de-centralized organization. ASEAN functions based on member consent versus seeking to force the ten member states to cede an excessive amount of sovereignty to a centralized intergovernmental organization. As a result, ASEAN as a regional trade pact, is thriving in an international arena that is frequently bogged down

¹ Upon the successful departure of the United Kingdom from the list of members, there will be twenty-seven members of the EU.

with states resorting to mercantilist, insular trade policies in lieu of free trade measures. Finally, the article advances the idea that transforming the European Union into a regional trade pact that returns large measures of sovereignty to its member states is one method of preserving the ideals underpinning the creation of the European Union.

Rashmi Goel

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Dementia and Criminal Responsibility

Around the world, we face the crisis of an aging population and rising rates of dementia. Loss of productivity in the marketplace, increasing burdens on families and caregivers, burgeoning health care costs associated with long term care, and the scramble for reliable treatments are only some of the things that contribute to the significant costs of this disease. Worldwide, almost 50 million people suffer from dementia already and almost 10 million more are diagnosed each year.

We have also seen rising rates of contact between the criminal justice system and dementia sufferers. Cases range from theft to dangerous driving and even murder. However, these traditional criminal defenses are ill-suited for such cases. Dementia's diagnosis, progression, and manifestations differ markedly from the more "typical mental illnesses to which these defenses have typically applied. Difficulties in diagnosis, distinguishing between the different types of dementia and predicting its progression create special problems. Finally, *dementia* is a broad based term covering a large range of symptoms and behaviors, each affecting criminal culpability differently, leading to consistency concerns.

This article explores the looming challenge of dementia among criminal defendants and examines the inadequacy of our current criminal law defenses.

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Raising the Consciousness of Mediation in Commercial Disputes

Where there is a dispute between the parties, the settlement authority of this dispute is the judicial body of the state. Because state courts have the exclusive competence to resolve disputes. In short, the competent authorities are state courts. However, it has recently been seen that the resolution of legal disputes before the judicial bodies of the state takes too many time. In addition, generally, courts spend too many time to resolve the small demands. This situation, of course, leads to the late manifestation of justice and undermines the trust in the society to the justice. Various solutions and theories have been produced to solve this problem, which is a common problem of all world countries. For example, arbitration is just one of these solutions. In addition, the mediation mechanism is one of the alternative ways that are applied frequently and effectively in the USA and EU countries. In Turkey, a new statute named mentioned as "Mediation Act on Civil Disputes" is the turning point about voluntary mediation. In particular, with the enactment of the Labour Courts Act, the mandatory mediation system was adopted in labor disputes. In December 2018, when a new law came into force, commercial disputes were also included to mandatory mediation system. Thus, the workload of the courts has been largely abolished. However, the major deficiency is that the masses, who will be the biggest interlocutor of mediation practice, do not have information about the subject. Indeed, it is seen that merchants behave quite hesitantly to resort to mediation when they have commercial disputes. But, even the protection of confidentiality is a very important reason to prefer mediation because of the importance of trade secrets. Within this study will be discussed first, how the new developments on mediation legislation is reflected to the implementation. In addition, in light of the statistical data and latest regulations the current situation will be evaluated. Finally, suggestions will made about what can be done to promote mediation in commercial disputes.

Peng Han

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Individualism in Chinese Legislation and its Role in Social Transition – A Durkheimian Approach

“Individualism” is used in this paper to denote “individualized wants and needs and of beliefs, sentiments and ideas” associated with “personality”. Durkheim identified the fact that when societies become more advanced, there is less individual resemblance, shown by the historical biological evidence that the more differences in individual cranial capacity, the more advanced civilization there is. Individual personalities are then formed and become conscious of themselves. This paper applies Durkheim’s theory of individualism in Chinese society and tries to examine how individualism is growing in Chinese laws from 1978. This paper examines the major changes of Chinese laws in the aspect of individualism for the past few years and applies Durkheim’s theory of social solidarity to understand those changes. It also tries to refine Durkheim’s original theory of individualism by investigating into the different roles of individualism in social transition of the PRC from 1978. This paper discusses the evidence of growing individualism in China laws since 1978, the influence of the rise of individualism on the changes of collective consciousness during social transition in China as well as the role of individualism in social transition from mechanical solidarity to organic solidarity. On the one hand, this paper is expected to be illuminating for understanding Durkheim’s theory of social transition, social solidarity, individualism, collective consciousness and anomie etc. from the findings of Chinese society. On the other hand, it also helps to examine the increase of individualism and the role of individualism in Chinese society for the past few years.

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Human Rights in the Context of the Venezuela Refugee Crisis

The Republic of Trinidad and Tobago is a tiny twin island Caribbean country situated off the coast of the South American Continent. It is in fact a mere six nautical miles away from Venezuela. In the year 2018, the Venezuelan economy was reported as having essentially collapsed. Millions of Venezuelan nationals are currently on starvation's door and desperation has led to widespread migration to neighbouring territories. The island of Trinidad has certainly experienced an influx of Venezuelans, who come in droves, on a daily basis, both legally, but more specifically, illegally, in search of food, medicine and a better life. For those who land in legal ports of entries, and are admitted limited entry for a maximum of 90 days, they are prohibited from engaging in employment. Consequently, many are forced to work illegally to earn money to survive. For the unluckier ones who do not enter in a legal port of entry, on a remote beach for instance, it is even more difficult to assimilate into society, as they live in constant fear of being caught and imprisoned and or worst, deported. The unluckiest ones however, are the victims of human trafficking, whereby they are tricked into coming to Trinidad to work as "baby sitters" or in bars and upon entry are enslaved and forced to work in brothels.

Due to the fact that these migrants or refugees live in the shadows of society, they suffer immensely from non -protection from criminal and civil abuse. Their very human rights are stripped away and the fear of imprisonment and or deportation is enough to prohibit these persons from reporting such abuses. This paper seeks to critically analyze the extent of human rights violations of Venezuelan Refugees in Trinidad and Tobago and in particular to comparatively analyze it with Trinidad and Tobago's international legal obligations as it pertains to the protection of refugees and human rights.

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New Mechanisms for Recovering Budgetary Claims in Insolvency

The Emergency Ordinance No. 88/2018, published in the Official Journal of Romania issue No. 840 of the 2nd of October 2018 on the amendment and supplement of several regulatory documents in the field of insolvency was adopted starting off from justified reasons within the objectives of the 2018-2022 Romanian Government program, which targets the economic growth, the improvement of the business environment and the increase of the budgetary income collection level.

Certainly, streamlining the insolvency procedures with the consequent improvement of the creditors' rights protection should contribute substantially to the improvement of the business climate, creating the premises for the rectification of viable business and a faster recovery of claims.

The analysis of the amendments brought to the Insolvency Law though leads us to the conclusion that they do not target the creditors' protection in general, but rather strictly the budgetary creditors' protection. Although the idea of increasing the amounts collected to the state budget from the insolvent companies is a coherent idea of any government, its practical implementation seems difficult, sometimes going against the principles that govern insolvency in Romania or downright impossible.

In spite of all the amendments brought to the Insolvency Law entering into force on the 2nd of October 2018, certain amendments of the Emergency Ordinance No. 88/2018 were already approved by the Senate of Romania (the Chamber of Deputies being decisional) on the 20th of November 2018.

Certainly, practice will lay down the parameters for measuring the efficiency of the actual application of the legal text, yet in the theory that may be formulated as of the date hereof, even by observing the amendments proposed for adoption, we reckon that the difficulties generated by the recent amendments are not eliminated.

Reinforcing the position of the budgetary creditor in the insolvency procedure with a view to make the debtors respect the payments assumed for the budgetary claims cannot lead to an unfair treatment of the other categories of creditors and may not violate the very established principles of the Insolvency Law.

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Is Your Idea “Abstract” and Better Yet, Can It Be Patented in the U.S.?

Courts in the United States have traditionally considered “abstract ideas” to be ineligible for patent protection. While application of the abstract idea exclusion to business methods has achieved some public policy goals, other software-related innovations such as artificial intelligence (AI) have found themselves in the cross-hairs. We will explore the historical basis for the abstract idea doctrine and discuss its relevance to modern technological advances. We will also offer practical solutions to avoiding patent eligibility pitfalls.

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Jekyll, Hyde and the Victorian Construction of Criminal Working-Class Masculinities

Violent crime has long been associated with ideas of insane and/or intrinsically dangerous masculinities in the global north. Victorian Gothic literature, generated during a period when positivist discourse around dangerousness, madness and crime was gaining in authority and coherence, provides particularly useful insights into the narratives underpinning these associations. This paper places the focus on the *Strange Case of Dr Jekyll and Mr Hyde* (1886), which, being a work of cautionary horror written during an era of powerful cultural fascination with violent urban crime, is particularly rich in such discourse.

Drawing from a range of methodological tools borrowed from literary criticism, legal humanities and discourse analysis, as well as the work of Foucault, the present endeavour uses Stevenson's novella as a penetrative lens to examine the anxieties of 19th century medico-legal thinking. More specifically, the many layers of the Jekyll-Hyde binary are analyzed along a series of other relevant binaries that characterize many Victorian narratives around crime; reason against insanity, normativity against deviance, and respectable bourgeois masculinities against uncontrollable working-class masculinities, whose savage sexuality poses a threat to social order. Contextualized historically as part of the wider *fin de siècle* preoccupation with degeneration theory, as well as legally, having followed a long series of legislative and policing moves to control the disconcerting underclasses amassing in urban spaces, the *Strange Case of Dr Jekyll and Mr Hyde* arises as a uniquely informative testament of the profound contradictions of a terrified post-Industrial Revolution Europe – what Moretti (1982) might call a dialectic of fear.

Narratives such as the ones unfurling in the *Strange Case* are not, however, taken as mere reflections of the activities and anxieties of the Victorian medico-legal apparatus. Rather, this paper concludes that the tensions permeating the novella constitute elements of a wider narrative construct whose main achievement was the validation and naturalization of a deeply rigid social taxonomy, justifying the exertion of violent control upon bodies inscribed as monstrous and Other. To accede to Simon (1993, p.245), the narrative construction of a binary between civilized society and a dangerous, criminal underclass offered new language, signs and archetypes for 19th century discourses seeking to justify asymmetries in forms of legal, social or economic control.

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Towards Militant Democracy: The 1930s in a Scandinavian Comparative Perspective

This paper examines the driving forces behind the controversial legislative measures, imposed on the Scandinavian societies in order to safeguard democracy in the 1930s. This is done by conducting a qualitative analysis of the public and confidential debates prior to ban of uniforms in 1933 and prohibitions against militant corps in 1934. The paper argues that the Scandinavian parliamentarians agreed on a range of repressive laws to prevent political violence and private militias in influencing the political life. These legislative measures, however, implied a change in the political attitude to the constitution pointing towards a so-called militant democracy. Hence, the paper will discuss the paradox that the politicians in order to protect liberal democracy curtailed some of the fundamental democratic rights. The conclusion of this discussion is that although the politicians were willing to limit the constitutional rights temporary, the parliamentary debates also reflect that the politicians distinguished between political practice and freedom of speech, thus criminalizing tendency to political violence, but allowing extreme political parties and opinions. Overall the findings can provide a better understanding of the failure of the antidemocratic movements (whether far-left or far-right) in Scandinavian interwar period. Furthermore, the findings nuance the well-established narrative of the Scandinavian countries, characterized by progressive social reform policy and consensus democracy. Finally, the findings contribute to the current debate on the rule of law and democracy in a populist era.

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The Role of the Budapest Chamber of Commerce and Industry Regarding Unfair Competition

This entry will deal with the history of competition law, including the first substantive competition law of Hungary, i.e Article V of 1923, which contained provisions regarding unfair competition. Currently, unfair competition is the subject of competition law, one of the branches of economic law, which contains regulations regarding the protection of economic competition and the prevention of consumer detriment. The purpose of Article V of 1923 was to offer general protection against any form of unfair competition.

The demonstration of each provision of the Article and the detailed demonstration and investigation of their practical implementation is not the topic of the present entry. The present paper will specifically focus on the arbitral tribunals of the Chamber and the practice of the jury since the fact that the duty and practice of these two bodies were highly significant for the application of the law in that era can be clearly concluded from the summary of research results. The central element of the Article could be honest commercial practice which can always be found in the public perception of the commercial and industrial world of a particular era. The jury and the arbitral tribunals were the bodies that could incorporate the morality of the commercial and industrial world. In the cases which the legislature did not emphasize in the competition law, it was the enforcement that had to establish the standards for honest commercial practice. On the one hand, it was welcomed as the power of courts was not limited in this respect. On the other hand, though, it must have been a particularly difficult task for the enforcement as each competitive action was judged on the basis of the morality of the commercial and industrial world of the era. It is demonstrated clearly by the standpoints of the Jury and Arbitral Tribunal of the Chamber of Commerce and Industry of Budapest as the concept of honest commercial practice itself did not provide an adequate “grasping” point. These two bodies tried to support the enforcement with its standards, standpoints and theoretical decisions and they attempted to provide appropriate content for the category of honest commercial practice as well.

In this paper, I will exclusively focus on the general clause expressed in section 1 of the article. Investigating the practice of Arbitral Tribunal of the Chamber of Commerce and Industry of Budapest and the Jury of the Chamber, I am seeking to know what meant the moral standard to them, based on which they could decide whether a certain commercial conduct was considered unfair or not. The reason I chose the practice of the Arbitral Tribunal of Budapest Chamber of Commerce and Industry is that

they were the bodies of enforcement that made their best endeavour to standardize the practice of law regarding commercial competition with their policies in the era.

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&

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The Status and Organization of Croatian Townships under the Act on the Organization of Town Districts of 1895

The purpose of this paper is to analyse the legal framework of status and organization of Croatian townships in the Croatian-Slavonian territory in the period of validity of the Act on the Organization of Town Districts from 1895. By analyzing the legislation framework, the author has concluded that the above mentioned act on the Organization of Town Districts had significantly reduced municipal self-government, but also that the towns in the status of the county gained the powers that enabled them the self-government of the broad spectrum. This law introduced a provision that the Government can dismiss the City Council if it worked against the Government's intent and set up a commissioner with powers of City Council and mayor. As before, supervision of the city's self-government was conducted by a „great city county prefect“, as a representative of the executive power. According to this law most of the cities were subordinated to the county government, and only the larger ones (Zagreb, Osijek, Zemun and Varaždin) remain directly subject to the Land Government for the Kingdom Croatia and Slavonia. Also, this law had limited active electoral right, ie abolished the active electoral right for women that existed under the previous law of status and organization of Croatian townships. For analysis the author has used relevant literature, laws, regulations and archival sources.

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Copyright Aspects of Life Sciences Innovation

In recent years, more and more organizations are measuring innovation. The components of the indexes (scoreboards) published by the World Economic Forum, the World Intellectual Property Organisation, the European Commission or Bloomberg include the measurement of intellectual property (IP) awareness. The rankings measure institutional aspects (IP protection in general), patent, trademark and design application activities, and / or technological outputs. Copyright can be found only indirectly in these indexes, primarily as an indicator regarding the number (and quality) of publications or in creative outputs.

Therefore, the purpose of my study is to examine how copyright appears behind a trademark, a design, or even a patent in life sciences innovations.

Copyright aspects of 3D printing, artificial intelligence, diagnostic software and their graphical user interfaces, drug advertising materials, etc. will be analysed.

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Conceptualizing Administrative Law

Over the past 150 years, public law scholars in common law jurisdictions have struggled to articulate a theoretical account of administrative law. While common law discourse regarding judicial review of administrative action can be traced as far back as the early seventeenth century, constitutional theorists have traditionally rejected the notion that administrative decisions are capable of grounding genuine legal obligations for legal subjects or alter judges' understanding about what the law requires in a given case. In some cases, this constitutional skepticism about the legitimacy of administrative law is motivated by more deeply rooted ideological opposition to the welfare state. But regardless of its intellectual basis, this skepticism seems both outmoded and contestable when one considers the array of public goods which are secured by the operation of the modern administrative state throughout the common law world.

In this paper, I will examine a recent attempt to depoliticize or "conceptualize" administrative law by drawing on scholarship in the field of analytical jurisprudence instead of constitutional and political theory order to construct a viable administrative law theory. More specifically, I will examine an attempt to conceptualize administrative law based upon Joseph Raz's interlocking theories of exclusive legal positivism and service account of authority. I will argue that this conceptual analysis is illuminating, because it highlights crucial, but largely unexamined, questions regarding the legal normativity of administrative decisions. Nevertheless, I will argue that conceptualizing administrative law in this manner is problematic, because it ignores or radically discounts procedural, substantive, and institutional safeguards which are essential to establishing the constitutional legitimacy of administrative decisions.

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Child Protection Laws: The Rights of the State v/s Families' Rights, Parents' Rights and Children's Rights

The Convention on the Rights of the Child (Article 19) and the South African Children's Act, 38 of 2005 (Section 28), provides for the protection of young people from abuse while in the care of their parents, guardians or any other person responsible for the young people's care. Furthermore, the Children's Act provides in an event where the rights of the young people have been violated, an application may be made for an order to terminate, suspend or restrict the parental responsibilities and rights of those assigned the said rights. The CRC's preamble on the other hand declares that the "family" should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community." According to the CRC and the South African domestic framework, the following is not clear: What rights do family members, parents and children have during family engagement in child welfare decision making? To what extent is the State granted authority to intervene in the private lives of families when a child's safety and wellbeing is at stake? When does legislation permit the removal of children from their family home; or the termination of parental responsibilities and rights?

This paper seeks to explore the extent to which the South African laws protect children from neglect and abuse; evaluating whether the discretion granted to the courts is desirably flexible or whether it should be restricted.

Michael Malloy

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Encountering the Mysteries of Law and Literature

The year 2019 marks the 125th anniversary of the birth of Dashiell Hammett, author and early contributor to the “hard-boiled” school of realist detective fiction. What is distinctive about Hammett’s novel *Red Harvest* is the extent to which the narrative is devoted to the corrosive effects of the failure of the rule of law. This paper examines the experience of life in a society where the rule of law has been abandoned in favor of greed and brutal self-interest. It looks at this issue from the literary perspective of *Red Harvest*, and from the legal perspective of cases like *Caperton v. A.T. Massey Coal Co., Inc.*, in which the U.S. Supreme Court considered the implications of possible judicial bias – or perhaps even corruption – based upon the timing of a litigant’s large campaign donation to a state supreme court judicial candidate. Among other things, the paper concludes that in the absence of legitimate and impartial law, the default rules of society tend to be more fragile and less predictable in their application and enforcement than fundamental due process requires.

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The Effectiveness and Suitability of the National Minimum Wage Act in Eradicating Poverty in South Africa

South Africa has faced a number of socio-economic challenges recently. The advent of democracy has ensured political stability and eased racial tensions. However, inequalities still exist in the economy and labour market and these inequalities exacerbate poverty and contribute to other social hardships. South Africa has ratified Article 131 of the ILO Convention. This Convention obliges members to establish a system of minimum wages, which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.

In South Africa, an Act of Parliament was (National Minimum Wage Act 9 of 2018) was promulgated, with specific focus on domestic workers, farm workers and participants in the Extended Public Works Programme. The Act purports to provide for, amongst other things a national minimum wage, to establish the National Minimum Wage Commission. The South African Act has also sought guidance from foreign jurisdictions such as Kenya, Brazil and the United Kingdom.

This paper seeks to explore the feasibility of the Act in eradicating poverty, its effect on the labour market, and, whether it is suitable for the country's particular circumstances.

Helene Mayrand

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Challenging the Legal Concept of ‘Safe Third Country’ in a North American Context

How to regulate migration is a sensitive topic in many countries. Change in government orientations has important impacts on such regulation. This is particularly the case in the European context, which has seen in recent years an unprecedented increase in migrants, including asylum seekers. While not at the same scale, Canada has also been subject to an increase in migration coming from the United States, those migration subject to the Safe Third Country Agreement between Canada and the United States (the Agreement), which came into force in 2004. This paper will present the legal notion of ‘safe third country’ in the North American context and it will question its relevance from a Canadian perspective. It will argue that the Agreement does not meet its stated objectives and that it contributes to human rights violations.

The notion of ‘safe third country’ is based on the objectives of burden-sharing and the ‘orderly handling of asylum applications’ (Preamble, the Agreement). The Canadian Immigration and Refugee Protection Act also specifies four factors to consider when designating or reviewing the designation of a safe third country: whether the state is party to the 1951 Refugee Convention and the 1984 Convention Against Torture; its policies and practices under these conventions; its human rights record; and the need for an agreement between the parties. The United States is the only designated ‘safe third country’ in Canada. The Agreement prevents asylum seekers coming from the United States to apply for refugee protection if they make their claim at regular ports of entry, subject to some exceptions. If they make such claim, they are returned to the United States, without a breach of the non-refoulement obligation. To avoid being returned to the United States and circumvent the Agreement, thousands of migrants have entered Canada through informal roads. While being ‘irregular’, migrants have presented themselves to Canadian authorities when they crossed the border and followed standard refugee status determination procedures. However, such irregular entries into the country have led to informal processes being put in place to deploy border control agents, transportation, medical resources and detention centres for refugee claimants. As a result, a parallel system has emerged to address these irregular entries, contrary to the Agreement’s objective to facilitate the orderly handling of asylum applications. Moreover, in light of the current controversial policies under the Trump administration—from banning immigrants from certain countries to family separation and detention—many have asked to repeal the Agreement based on the argument that it violates human rights. The Agreement is currently

subject to a judicial contestation before the Federal Court of Canada. While a similar argument was made in 2007 and did not succeed (*Canadian Council for Refugees v. Canada*, [2007] FC 1262 reversed in [2008] FCA 229), the paper will contextualize the new arguments in light of recent jurisprudence and the new political context and will suggest that it may now succeed.

Russell Miller

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An Inconvenient History of Judicial Independence

One part of the game-plan for the new wave of populist and authoritarian regimes around the world has been to attack, undermine, and co-opt the judiciary. This has led to questionable new judicial appointments, disruptive and cynical judicial restructuring, and constitutional amendments in Poland and Hungary. The administration of President Erdoğan in Turkey has taken a more heavy-handed approach. *The Guardian* newspaper reports that “nearly a quarter of all Turkish judges, about 4,000 people, have been either dismissed or arrested since the [2016] coup attempt.” In the United States, in an unprecedented manner, President Trump has insistently attacked specific judges and the judiciary more generally calling the judiciary’s patriotism and neutrality into question.

Especially in the case of Eastern Europe’s new democracies, the populist assault on the judiciary has attracted intense scholarly criticism and formal, institutional rebuke. Poland is the most dramatic example. The European Commission, expressing concerns about Poland’s judicial reforms, applied to the European Council for sanctions pursuant to Art. 7 of the Treaty on European Union. The European Commission also referred Poland’s “Law on the Supreme Court” to the Court of Justice for the European Union, alleging that it erodes judicial independence in violation of Art. 19(1) of the Treaty on European Union.

Criticism of these attacks on the judiciary neglects an inconvenient truth about the history of judicial independence: the judiciary, also in established democracies, always has been held in suspicion by majoritarian institutions and subject to greater or lesser attempts to weaken or politicize what Hamilton referred to as “the least dangerous branch”(Federalist 78). That reality, in turn, exposes unarticulated assumptions about the power and prominence that unelected (and often unaccountable) judges should exercise in a democracy. We may be unreflectively accustomed to it, but the courts’ power of judicial review is and probably should remain a contested institution.

This paper documents the troubling history of judicial independence in the United States, from the questionable role of Chief Justice Marshall in the famous *Marbury v. Madison* case, to Roosevelt’s threatened “court packing plan” in the 1930s, to attempts to pack courts or strip them of their jurisdiction in American states in recent years. Animated by that reality, the paper then surveys the persistent criticism of judicial review in American scholarship.

The project strikes a cautionary tone as established democracies—and scholars working from within those traditions –intensify their condemnation of populist and authoritarian regimes’ attacks on the judiciary.

Marina Mokoseeva

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Certain Issues of Transformation of Russian Legislation by International Intergovernmental Organizations

Russian federal ratification laws have become the definitive basis for the transformation of legislation by acts of international intergovernmental organizations. This transformation currently concerns over 100 provisions of Russian regulatory legal acts, with statutes and codes in first place, having eliminated conflicts of laws and legal gaps.

This article analyses transformation processes related to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, the United Nations Convention against Corruption, the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, and the UN General Assembly Convention on the Rights of Persons with Disabilities.

For example, 25 Russian regulatory legal acts were amended after the ratification of the Convention on the Rights of Persons with Disabilities. Such amendments were made to Federal Law No. 1032-1 On Employment in the Russian Federation dated 19 April 1991, Federal Law No. 3612-1 Fundamentals of the Legislation of the Russian Federation on Culture dated 9 October 1992, Federal Law No. 5473-1 On Institutions and Bodies Executing Criminal Punishments in the Form of Deprivation of Liberty dated 21 July 1993, the Correctional Code of the Russian Federation, the Inland Water Transport Code of the Russian Federation, the Administrative Offences Code of the Russian Federation, and many other regulatory legal acts.

The Russian legislator not only quite actively modifies and amends the existing federal laws, but also adopts new federal laws. The author notes that the impact of international intergovernmental organizations on Russian legislation has become unprecedented and of a global nature in relation to all branches of Russian law.

Due to the particular importance of such transformation processes to the Russian State, the author proposes to provide for a legislative provision in Article 15(1) of the Law on International Treaties stipulating that the list of types of international treaties of the Russian Federation that are subject to mandatory ratification should be open.

The author also proposes to envisage a detailed procedure in the Law on International Treaties for enforcement of international acts ratified by the Russian Federation to effectively secure productivity of transformation processes.

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Paul Naccachian

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India's Path to Economic Growth: Does Industry Level Trade Policies Effect Variation in Economic Growth Pattern?

Trade policies towards liberalization and positive affect on economic growth continue to dominate empirical debate. In general, the expectation is that a country's systematic openness to trade policies increases productivity and as a result economic growth is stimulated.

This article will consider the literature on trade growth, and trade policies in India and present a snapshot view of liberal policies towards automobile manufacturing as one important sector in post 1991 liberalization period in India. Utilizing time series analysis, the article examines data from the automobile industry's growth pattern in units of production as it relates to various indicators in tariff rate, increase in foreign direct investment (FDI), export, and the overall improvement to the GDP per capita.

Consequently, after analyzing the data, the findings support the following

outcomes: that there is a high correlation between India's post 1991 open liberal policies, thereby support the claim that openness allowed local markets to foreign competition in automobile production and (FDI). The conclusions reached are consistent with research findings, in that improvements relating to productivity of domestic industries that are able to realize efficient allocation of resources and greater overall output in sector performance gain tremendously from moving towards open and liberal policies.

Kimberly Norwood

Professor, Washington University School of Law, USA

The Post-Ferguson Social and Legal Reverberations: Has Five Years Changed the Social Justice Trajectory?

On August 9, 2014, an 18 year old, unarmed Black male was killed by a police officer in the small, previously unknown town of Ferguson, MO. The body was left on a public street, on a hot sunny Saturday afternoon, for four hours. As the crowds grew, so did the outrage. This incident sparked international media coverage, the likes of which the St. Louis region had never seen. Today we refer, globally, to what happened that day and the aftermath of that day simply as “Ferguson.” That one word, “Ferguson,” has come to represent the worldwide struggle for equal justice and equal treatment.

Our book, *Ferguson’s Fault Lines: The Race Quake That Rocked A Nation*, used Ferguson as the foundation for a study on how various laws, social conditions, and economic and political policies negatively impact the lives of Black and Brown people in America. These factors formed a perfect storm on that hot August day in 2014. After Michael Brown’s execution that day, society collectively screamed no more! His bullet riddled body became the metaphorical straw that broke the camel’s back. For months, even years, after “Ferguson,” people all over the world protested. The protests aptly homed in on a wide array of clear pattern of troubling norms of racial and socioeconomic disparities throughout the country in the areas of police harassment and use of excessive force, poor educational systems, poor access to health care, inadequate access to jobs paying a living wage, and inadequate housing. These disparities not only illustrated the widening gaps between the haves and have nots, but also highlighted the existence of an entrenched caste system based on socioeconomic and skin color. Ferguson brought this to light. But that was five years ago. All eyes were on Ferguson then. What about now?

This paper will examine the institutional, systemic, and cultural structures that resulted in racially disparate treatment of Blacks in Ferguson. The paper will look at changes over the years and evaluate whether policing improved; whether schools are better; whether people have better access to health care, housing, and employment. Whether judicial system is holding the town of Ferguson accountable for its prior unconstitutional conduct; and what, if any, legislative changes have been made to address the inequities that came out of Ferguson?

These are crucial inquiries. Ferguson is a mere microcosm of similar communities throughout the world. And unless we evaluate lessons learned from Ferguson, it may only be a matter of time before another “Ferguson” erupts – perhaps with more dangerous and irreparable societal consequences. We can prevent that with our actions.

Ferguson taught us the problems. We now know better. But are we, in fact, better? And if not, how do we get there? This paper will address this and related questions.

Jorge Emilio Nunez
Senior Lecturer, Manchester Law School, UK

Sovereignty, Facts and Norms

Sovereignty has to do with at least two realms: that of the norm and that of the fact. This paper assesses sovereignty in its normative and its factual existence. In order to conduct this analysis the article will introduce first the von Wright's notions of action and norm. Secondly, the Hohfeldian views on rules and facts will be applied to sovereignty. Thirdly, the normative and factual realms will be put together following Kelsen's thinking on sovereignty. Finally, a sample of current works in legal and political sciences in relation to sovereignty –i.e. the works of MacCormick and Krasner – will show that although these views are only different because they mix factual and normative elements in all cases include a conception of sovereignty that recognises its limited nature. That is because there is no such a thing as absolute state sovereignty.

Kurt Olson

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Effectively Governing the Internet in a World of Diverse Ideologies: Emerging Technology and the Need for Flexible Funding Security and Copyright Models in an Internet-Enabled Global Economy

Funding New Technology Ventures

In the U.S. we expect entrepreneurs to develop an idea at which point they seek funding either from venture capitalists or other sources. Not everyone can be Elon Musk with unlimited private equity to see an idea through without outside funding. Instead, the third-party doctrine can be both a help and a hindrance to increased innovation; companies often plan obsolescence and innovation suffers degradation because of pressures imposed by funding sources. The Apple and Facebook case studies provide interesting points of comparison and contrast both in terms of innovation and capitalization. Often divergent interests, driven by competing considerations, dilute the openness and fairness principles the internet was founded on, and innovators' mission statements go from enabling connection/collaboration to satisfying investors with a laser focus on the bottom-line.

Securing a Connected World

An unfortunate byproduct of development in the 2010 era is that goods, services, and products are never fully "perfected," but rather in a constant state of beta testing requiring the user-logs transmission back to home servers to examine usage statistics so as to produce more informed updates in next patch. When different commercial and national actors send untold amounts of data using network infrastructure, consistent procedural, regulatory, and statutory frameworks must be implemented to effectively govern manufacturers, developers, conglomerates and regrettably even state actors.

Many statutory schemes were not enacted with the current technological revolution in mind; more importantly, national and international boundaries often send inconsistent messages. While the most recent GDPR enacted by the European Union contains a "right to be forgotten," antiquated U.S. laws were designed in a long-forgotten analog age. Regrettably, service providers take advantage of the weakness built into a balkanized system and often, wittingly or unwittingly, wreak havoc with consumer expectations. Examples include Facebook, recently fined \$1.63 billion under the GDPR and Marriott which may dissolve because of its potential liability. Under these circumstances policy makers should be questioning

whether a rush towards even newer, potentially more diabolical, systems like AI, autonomous vehicles, and biometric data collection is in the public interest.

Content, Collaboration, and Copyright

The international marketplace for media and content performance has expanded exponentially in the wake of increasingly meaningless geographical boundaries (YouTube, Netflix in foreign markets - Adam Sandler). IP theft plagues the entertainment sector, the infrastructure of the ever-expanding web, and national security sectors: Everyone is vulnerable. While fixes or at least deterrents have been contemplated and implemented in some sense, it remains to be seen whether proactive “ex-ante” or retroactive “ex-post” steps are more effective to curb rampant piracy. Examining the experiences of ICANN and WIPO over the past twenty or so years could provide useful clues as to how to proceed into the next millennium.

Mokshda Pertaub

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Mauritius

Increasing Public Trust and Confidence in Environmental Law through Judicial and Legal Training and the Framework of the Specialized Environmental Tribunal – the Mauritius Experience

Environmental protection and preservation is a major concern for Mauritius as we are 7th in the world as country at disaster high risk and small islands developing states. Moreover, our economy is largely based on tourism and protection and preservation of our environment, especially marine and natural beauty of the island is fundamental to the economic and social development of Mauritius. Mauritius has signed numerous environmental multilateral agreements and have been putting the environmental legislation in place gradually. However, law should not just be a toothless tiger. The creation of the Environmental and Land Use Appeal Tribunal whose mission is environmental justice since 2012 has contributed to a large extent to sensitize the public on environmental harm and degradation through its cases, which can be appealed at the Mauritian Supreme Court, and ultimately the UK Privy Council. Moreover, focusing on environmental law in legal and judicial training has also contributed its fair share in creating awareness on environmental principles among lawyers and judges, which in turn creates a paradigm shift in civil society which becomes more aware on the importance of environmental preservation and protection. On one hand, Mauritius is poised for greater economic development which can be at the cost of the environment. How can we bring in sustainable model of development? How can we sensitize the public about the importance of environmental protection? Furthermore, how do we keep the faith of the public that our government and institutions are not just paying lip service to environmental protection while pursuing the economic development agenda?

This paper purports to examine how the judicial framework and judicial and legal training in Mauritius can effectively contribute to provide a solid foundation in environmental awareness and the need for sustainable development and intergenerational equity.

Mate Petervari

Senior Lecturer, University of Szeged, Hungary

The Practice of the Bankruptcy Act in Hungary in the Interwar Period

According to the Austro-Hungarian Compromise Hungary regained the independence and the Hungarian political elite desired to give a boost to development of the economy. The one of the suitable means to revive the economy of the Hungarian government was the forming of the appropriate legal regulation concerning to the commercial law. In 1875 the Hungarian National Assembly passed the first Hungarian Commercial Code, which supplemented by a new Bankruptcy Act in 1881.

The first Hungarian Bankruptcy Act was the Act XXII of 1840, which regulated a long and complicated procedure on the basis of the German sample. The National Assembly wanted to improve this act because the goal was the support the talented merchants, therefore they want to hasten and make elastic the bankruptcy procedure. The new bankruptcy act in 1881 was a modern regulation, and it was appropriate to the requirement of the economic life. This Act remained in force until the socialism after the Second World War therefore I would like to examine how the act functioned in the Interwar Period in Hungary. I would like to present the practice of this act on the basis of archive material of the Royal Court of Appeal of Szeged.

Michely Vargas Del Puppo Romanello

Assistant Professor, Adventist University of São Paulo, Brazil

&

Jose Geraldo Romanello Bueno

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Brazil

Civil Liability of Heterosexual Couples for Returning Children and Adolescents in the Accommodation Period of the Adoption Process

Adoption is an act of great responsibility towards its many implications for the child or adolescent to be adopted. This is because such an act will create in them an expectation of great change in their lives consistent in being part of a new family, which is why the adopters during the adoption process should act responsibly respecting that they intend to adopt, under penalty of being held accountable for harmful acts against the child or adolescent. One of the worst acts committed against the adoptee is their return during the stage of coexistence, a fact increasingly common in our country, which ends up with all the expectation it integrate a family and it often is more a rejection that he suffered. Thus the accountability of those who flout the institution of adoption becomes extremely necessary as a way of protecting not only children and adolescents but also the whole society.

Jose Geraldo Romanello Bueno

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**Obstetric Violence: Mistreatment during Childbirth and its
Legal Consequences in Brazil**

Obstetric violence is a real evil, characterized by the appropriation of the body and the reproductive processes of women by health professionals, through dehumanized treatment, abuse of medicalization and pathologization of natural processes, where women lose their autonomy and have their protagonism disregarded during the childbirth. Faced with this, respect, dignity and free choice in childbirth are human rights issues and require discussions from the point of view of interdisciplinarity discussion. Firstly, in the present work a sketch was made regarding the delivery of a child in historical evolution and the variety of movements that influenced and contributed to the model of assistance to pregnant women that we have today, encompassing its concepts and main points. Then, it was approached regarding the reproductive health of women in the Brazilian reality, noncompliance with existing norms and legislation, as well as procedures considered harmful, and the ban on the companion, which violates Law 11,108 / 2005, causing greater vulnerability during this period. At the end of this study, it was possible to conclude that women victims of such violence coexist with temporary or permanent consequences, and it is necessary to visualize and create practices for the improvement and correction of such problems, where humanization is one of them, being strongly related to women feel welcomed, informed, safe and close to the medical staff. One can understand by "dignified childbirth" the one that is related to the warm, respectful, informed, safe treatment, where the autonomy of the woman is preserved and its rights assured. The work was elaborated based on the deductive method, based on legal, doctrinal and jurisprudential research.

Jeronimo Romanello Neto

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The Use of the Fundamental Right to Health for Patients who have Serious and Rare Diseases: Obtaining Treatment and Medicines through the Brazilian Judicial Route

This monograph analyzes the patient's right to life and the patient's right to receive treatment for their pathology by the judicial route, since these drugs are expensive and often not provided by the Brazilian Health System. Emphasizing the difficulties of obtaining by administrative means and the lack of compliance of the State with injunctions in legal proceedings. It is seen by this negligence, that many lawyers processes the Union to get these drugs free of cost. These lawsuits are being debated both in the Brazilian Federal Supreme Court and in the Brazilian Superior Court of Justice. A verdict is expected by the Supreme Court in order to continue or not the supply of these expensive drugs to the Brazilian population. This paper discusses the right of patients to have these medications based on the Brazilian Constitution and the Brazilian Civil Law, in spite of the decision of the Brazilian Supreme Court.

Rutvica Rusan Novokmet

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Challenges to Strengthen the Protection of Civilians by Non-State Actors in Non-International Armed Conflicts

One of the fundamental rules applicable to armed conflicts is that all Parties to a conflict, whether international or non-international, are obliged to respect the rules of international humanitarian law and bear the responsibility for their violations. Therefore, the obligation to respect the legal framework regulating non-international armed conflicts concerns not only the government of the State concerned, but also the other Parties involved in the conflict – non-State actors who aim at taking power in the country or achieving some other political goals by using armed force. However, compared to States, legal position of non-State actors in expressing their willingness to be bound by the rules of international humanitarian law is not equal. Namely, non-State actors cannot formally become Parties to the four Geneva Conventions on the protection of victims of war of 1949 nor to the Additional Protocol II to the Geneva Conventions of 1977. The consequences of such a legal *lacuna* are directly connected to the lack of protection of civilians in non-international armed conflicts: non-State actors either lack awareness of the obligatory nature of the international humanitarian law or they lack means to familiarize their members with these obligations.

Deliberate attacks against civilians and civilian facilities, hostage-taking, torture and other forms of ill-treatment, sexual violence, use of civilians as human shields, recruitment and use of children in armed hostilities, indiscriminate use of anti-personnel mines, forced displacement, obstruction of humanitarian assistance – these are just a few of many examples of gross violations of international humanitarian law committed by non-State actors. Both theory and jurisprudence have confirmed that the obligatory nature of international humanitarian law does not depend on its formal acceptance by the Parties to the conflict; they are bound by these rules from the moment the armed conflict arises. Hence, it is imperative to use more effective mechanisms to introduce non-State actors with the binding international legal framework applicable in armed conflicts and their duty to protect those who are the primary victims of armed conflicts – innocent civilians. In this context, international organizations like the *Geneva Call* and the *International Committee of the Red Cross* play an extremely important role in convincing non-State actors to sign unilateral declarations or so called Deeds of Commitment by which they voluntarily express their commitment for the prohibition to use anti-personnel mines, the protection of children from the effects of armed conflict, the prohibition of sexual violence and gender discrimination, or to provide the protection of health care in armed

conflict. Dissemination of these rules can have positive influence on the awareness of the members of non-State actors that they are internationally responsible if they violate them. Furthermore, better compliance with the international humanitarian law can influence the perception of the non-State actors' goals and policies as legitimate, which can provide them with more public support. Most importantly, it can prevent future violations of these rules and contribute to the better protection of civilians in non-international armed conflicts.

Miriam Salholz

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**Implementing Human Rights:
“Philoxenia” and Teaching Students to Know, Care About
and Take Care of the Human Rights of the “Other”**

Taking care of the other is an ancient concept, with roots in the classic Greek tradition of “philoxenia” or “guest-friendship”. This generosity and courtesy shown to those far from home require acts of hospitality and welcome. The obligation to care for the other is also implicit in Article 14 of the United Nations Universal Declaration of Human Rights, which states that “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

In contrast, current world dynamics stress nationalism and closed borders, attention to one’s own demands rather than international human rights. The “other” is neglected and respect for their human rights is lacking. One of our fundamental tasks as educators is to prepare current and future generations of students to take care of the “other” - be this person a refugee, asylum seeker, or a visitor. Before students will do this, students must care about the “other.” The prerequisite to caring about the ‘other’ is knowing the “other.” This paper will present a variety of classroom techniques to teach students to know the “other.”

Students face challenges to know the “other.” We may live in societies characterized by the multi (multi-cultural, multi-racial, multi-ethnic, multi-national), yet many students live in environments with homogeneous populations, where, at least from external manifestations, everyone looks, sounds, and thinks just like them. Even if students have a vague awareness that the “other” exists via neighbors or classmates who look, sound, or dress differently than they do, they may not understand or question these differences. Students may not understand that the “other” may experience life differently than they do, and have different needs and different reactions to the same situation. How can they if they have never acquired any understanding of the “other?”

It is often difficult for students to acquire this knowledge of others. This paper will present pedagogical approaches on how to educate our students to know about the “other.” To do this, we must inculcate knowledge about and respect for persons of differing backgrounds, including diversity of race, religion, nationality, culture, genders, socio-economic status and health. The approaches presented in this paper include utilization of a “thread family” with members of differing religions, genders, races, etc., as well as that of role-playing: literally putting students into the place of the “other.”

The pedagogy should be interdisciplinary and include areas such as law (national/international law and organizations; history; sociology; and

religion (from antiquity - Zeus Xenios as protector of guests embodied the religious obligation to be hospitable to travelers - to the contemporary). Professors should also utilize a variety of media, for example, film, literature, music, and visual arts.

The desired result is that students will begin to know the “other,” which is the necessary first step in preparing students to care about the “other” with the ultimate goal that students form the future generations that take care of the “other.” Universities, where the international office is often known as a “welcome center” are the ideal institutions in which to inculcate philoxenia.

Claudio Sarra

Associate Professor, Università di Padova, Italy

Relevant Legal Issues for Hybrid Human-Robotic Assistive Technologies: A First Assessment

In this talk I present a first assessment of the legal issues raised by a new kind of human-machine interface aimed at the assistance of disable people in the development of ordinary tasks. This specific technology – which are currently in a preliminary phase of development at the University of Padova – combines Artificial and Ambient Intelligence, with various kind of human and ambient data analytics as well as various degrees of autonomous intervention and interaction by the machine in making the subject accomplish ordinary life tasks. Differently from other project of human-machine interface this technology is not thought as a rehabilitation tool but directly as an assistive technology.

From the legal point of view, three specific aspects will be here under scrutiny: a) the *respect of rights* and freedom of the *subjects under test*; b) the *legitimacy of data processing*; c) the *evaluation of the risks* related to the degree of autonomous intervention of the machine in relation to the actual intention of the subject whose motions are assisted.

As for a): since the test subject is expected to have a new kind of experience with his own body and his relation with the environment, the proper amount of information as well as the persistence of the necessary consent for the installation and the working of the tools cannot be taken for granted one for all. Thus relevant safeguard measures must be taken in order to check and evaluate this aspect during time, some methodological suggestions are given.

Secondly, as emerged with the – although quite different – case of LOKOMAT system, the installation and the performance needs of the machine could affect the subject's motor habits, posture or spontaneous strategies of overcoming limitations, eventually interfering and compromising other therapeutic strategies. In this case, a damage legally relevant would emerge and other specific safeguard measures are to be taken to prevent this.

As for b), in this case, personal data are – at least – of two kinds: 1) those of the subject under test, including data ex art. 9 GDPR, requiring special attention; 2) those of third parties: since the interface is expected to acquire data also from the environment in order to assist the motion intention, once put in an intersubjective relation, it may record and process also data pertaining to different people with different degree of intimacy with the test subject. This problem is expected to be quite limited in the experimental environment but an evaluation is needed for future applications.

As for c), this is the most problematic field so far, since it has to do with the possibility of (certain degrees of) autonomous movement of the machine and its ability to move the subject's limbs towards the goals. The fewer the motion is under the control of the subject because of his injury, the more the machine has to elaborate and to take his place, raising questions about the responsibility of consequent damages. I discuss two scenarios: damages to the test subject himself and to third parties.

Charalampos Stamelos

Scientific Collaborator, European University Cyprus Law School, Cyprus

**A Case Study of State and Law in the Interwar Period:
The Trials of Bishop of Paphos Leontios in Cyprus**

During the Interwar Period in Cyprus the United Kingdom was the ruler. The Administrators in Cyprus were English. They tried to maintain law and order by demanding obedience to the King of England. However, most Cypriots, more Greek-Cypriots, wanted to achieve the Union of Cyprus with Greece. Such a Union occurred in the case of Crete. In 1913 Crete joined Greece without any war but through diplomatic means. On the contrary, the English rulers did not want to transfer the ownership of Cyprus to Greece. In 1864, England has donated the Seven Ionian Islands to Greece. But as for Cyprus this was not the case. Bishop Leontios publicly spoke about the Union of Cyprus with Greece. This is why the English courts tried him for the possibility of causing disturbance of public order. In 1932, Bishop Leontios pleaded guilty and paid the amount of 250 British Pounds as a guarantee for not repeating such criminal words for the Union of Cyprus with Greece. However, Bishop Leontios repeated again and again his words as a preacher in many occasions in the premises of churches. The new English ruler Palmer, who previously ruled Nigeria, was a hard ruler. He imposed a strict limitation of human rights and freedoms and his regime was characterized as a 'dictatorship'. In such legal environment, Bishop Leontios in 1938 was tried for the same offences as in 1932 being a threat to the public order of Cyprus as he publicly spoke about the Union of Cyprus with Greece. The English court punished Bishop Leontios with a 12 months obligation to remain within the territory of Paphos. In 1939, the trial was repeated and the English court again imposed Bishop Leontios a 12-months obligation to remain with the territory of Paphos. Such case study contributes to the realization of a legal status of Cyprus under the English rule. It was actually an authoritarian regime which caused the reactions of Cypriots against the British. It was about law, but a law which was unfair. This reminds us the eternal question and battle: Antigone and Kreon, natural law against settled law and the right to disobey against unfair rules and laws.

Līga Stikane

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What Effect Does European Private International Law on Cross-border Divorce Have on National Family Laws and International Obligations of the Member States?

With the number of cross-border divorces in the European Union (EU) soaring, the adoption of a Regulation concerning jurisdiction and the recognition of judgments in matrimonial matters (the 'Brussels II *bis* Regulation' or 'Brussels II *bis*') and of a Regulation implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (the 'Rome III Regulation' or 'Rome III') seems like a logical step. But what effect does this European private international law on cross-border divorce have on the national family laws and international obligations of the Member States? Discussion-provoking is the fact that the interaction between Brussels II *bis* and Rome III has resulted in Malta being forced to finally introduce the institution of divorce into its substantive family law. This shows that EU law may have some impact on the national family laws of the Member States in the future as well. For instance, Member States, which have not yet legalised same-sex marriages, may eventually be forced to do it, since according to the *travaux préparatoires* of Rome III and the view expressed by many legal scholars same-sex marriages are also included in its scope. This paper argues why this acknowledgment is especially confirmed by Article 13 of Rome III and analyses how this may lead to the introduction of same-sex marriages in those Member States, in which same-sex marriages are not yet allowed. Besides, a Member State which participates in Rome III, but whose law does not provide for the institution of legal separation, for instance, Latvia may be forced to deal with this institution, if during the course of cross-border divorce proceedings a request is submitted to convert a legal separation into a divorce. If the particular legal practitioner applying Rome III is unfamiliar with the institution of legal separation, it may lead to some complications. Moreover, although by using the public policy rule established in their national private international laws Member States may avoid the recognition of a Muslim divorce pronounced in a third country according to the Islamic law, problematic issues may be caused by the *mufti* divorce pronounced in Greece, which according to Brussels II *bis* could be entitled to an automatic recognition in all the other Member States (except Denmark). Furthermore, this contribution suggests that, if according to Brussels II *bis*, Greece automatically recognises a cross-border divorce of a Greek Muslim couple from Western Thrace with a habitual residence in, for instance, France, to which French law has been applied instead of the Sharia, Greece will breach its international obligations. Thus, this paper argues that the application of European

private international law may create an awkward situation, in which a Member State may be forced to breach its international obligations in order to fulfill its obligations under European private international law. This contribution suggests an amendment to Article 22 of Brussels II *bis*, which could solve this issue. Hopefully, the analysis carried out in this paper will lead to more discussions on this important subject among legal scholars.

Kristof Szivos

PhD Student, University of Szeged, Hungary

Introduction to the Case Management in the Interwar Period of Hungary

The new Code of Civil Procedure of Hungary strengthened the court's role. One of the new principles (the court's duty to manage the case) states that the court shall contribute to enabling the parties to perform their procedural obligations. The paper examines the historical basics of this institute. It introduces the means and methods known by one of our previous Code, the Act I of 1911, which was the first modern Code of Civil Procedure of Hungary. It was based on the German and the Austrian Codes, however, it guaranteed a stronger role to the court. The paper presents the theoretical and practical side of this institution as well, highlighting its craggiest mean, the so called 'preterition', which allowed to court not to take a motion into consideration provided it aimed the protraction of the civil procedure.

Pierre Thielboerger

Professor, Ruhr-University Bochum, Germany

&

Mark Dawson

Professor, Hertie School of Governance, Germany

Implementing the UNGPs in the European Union: Towards the Open Coordination of Business and Human Rights?

This paper examines the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) in the European Union via National Action Plans (NAPs). We argue that some of the shortcomings currently observed in the implementation process could effectively be addressed through the Open Method of Coordination (OMC) – a governance instrument already used by the European Union (EU) in other policy domains. The article sketches out the polycentric global governance approach envisaged by the UNGPs and discusses the institutional and policy background of their implementation in the EU. It provides an assessment of EU member states' NAPs on business and human rights, as benchmarked against international NAP guidance, before relating experiences with the existing NAP process to the policy background and rationale of the OMC and considering the conditions for employing the OMC in the business and human rights domain. Building on a recent opinion of the EU Fundamental Rights Agency, the article concludes with a concrete proposal for developing an OMC on business and human rights in the EU.

Mihaela Tofan

Professor, JM Chair, "Alexandru Ioan Cuza" University of Iași, Romania

Fiscal Sovereignty or Fiscal Competition in EU Regulation: Theory and Legal Practice Controversy

The actual EU integration status is based on fair social standards for all EU citizens, which implies many areas and dimensions of coherency for the activity of the EU members, both at central states governments policy level and in the everyday life of the people. The functioning of the European Union implies multiples sectors of activity, that have reached different level of integration, with precise features, starting with the most reputable unions (such may be considered the custom union) to the newest one, that are still under construction (as the fiscal union may be). The papers analyses the role of legislation for strengthening the European integration, in the present context. The research starts with the documentation on the legal framework of the EU common market fundamental principles, the functioning and the effects of these principles in theory and also in the Court of the Justice of the European Union (CJEU) resolutions. The impediments that taxation could raise for the optimal function of the common market are explained and the necessity of the fiscal harmonization is emphasized. On one hand, the research focused on the legitimacy of the fiscal common rules in the EU, showing on the other hand the legal possibility for the open competition among the member states fiscal systems. Present ongoing regulatory projects concerning base erosion and profit shifting (BEPS), common corporate taxation base (CCTB) and common consolidated corporate taxation base (CCCTB) are investigated and amendments to the regulatory proposition are formulated. The active role of the CJEU is emphasized and the role of the regulation to develop further integration is explained. The paper conclusions are that the present fight for optimizing the fiscal systems of members states of the EU is one reason more to develop intense actions towards fiscal integration, but there are still important legal, political and social obstacles to overcome in order to built the European fiscal union.

Cornelius van der Merwe

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Comparative Perspectives on the Regulation of Short-Term Letting in Condominiums in Five European Cities

Increasing numbers of residential condominium owners and tenants as well as persons who bought into condominiums for the purpose of investment are exchanging traditional long-term leasing for private holiday letting. The recent surge in popularity of websites such as Airbnb, Homeaway and Stayz enable these owners to market their apartments to millions of holidaymakers from all over the world. These owners and tenants of condominium units start letting out their apartments, spare rooms and even couches to supplement their income.

Short-term letting have caused serious behavioural, economic and legal concerns. Behavioural concerns triggered by some of these “guests from hell” include excessive noise, urinating, littering, nudity, dropping objects from balconies, drunken tenants jumping from the roof onto balconies, overcrowding and partying, damage to common property; congested parking; entrance of unsavoury outsiders. Economic concerns centred on greater wear and tear of common parts and facilities, damage to the reputation of the condominium and decrease in value of the units. Legal concerns include the invalidation of insurance policies, unwanted liability issues because of access of guests to swimming pools and gymnasiums; shortage of affordable housing cause by less longer-term rental apartments and competition with the hotel industry and bed and breakfast establishments.

In this contribution, my focus will be on the municipal regulation of short-term letting in five European cities namely London, Paris, Barcelona, Berlin and Amsterdam. I shall examine what mechanisms these municipalities employ to combat the concerns of local authorities mentioned above and what these cities do to prevent that short-term letting removes longer-term rental properties from the housing markets and turns entire residential neighbourhoods into tourist ghettos. In conclusion, I shall submit that short-term letting should be allowed but only under strict conditions to minimise the negative impacts of short-term lettings in condominiums.

Norbert Varga

Associate Professor, University of Szeged, Hungary

The First World War and Cartel Law in Hungary

It is obvious that World War I affected private law and private law codification, which can mostly be caught through state interference, for during peacetime, the state keeps its distance from interfering in affairs of private law, apart from legal protection. However, the situation changed after the war broke out, and in order to ensure national purpose and general interests, interference was deemed necessary, especially in fields like price regulation and cartel law. It can be stated that the state acted on any abuse in economic life and unfair competition with extreme severity. The war and the following economic conditions overshadowed private ends. After the war, the allowed became forbidden, and because of this, laws were introduced one after the other (price inflation, unfair competition, cartel law) through which they wished to ensure economic purity and the protection of consumers. In my presentation I would like to answer related to the following questions. What is the cartel question? Is it an economic or legal problem, maybe both? If we find out the answer to these questions, the necessity of regulation becomes clear. The most important purpose of the codification of the cartel law was averting misuses.

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**The Duty of Loyalty as a Tool for Fundamental Human
Rights Enforcement in the EU Legal System**

The present contribution will discuss the effectiveness of enforcement of Fundamental Human Rights under EU law from a systemic perspective and with relation to the figure of the national judge. The focus will be on legal mechanisms of enforcement that only emerge in the specific context of the European Union, especially due to the overarching duty of loyalty. Those conclusions will be sustained by reference to the recent case law of the Court of Justice concerning the mechanism of the European Arrest Warrant. If the concrete analyses will exclusively stem from EU law, the contribution will provide a synthetic yet thorough introduction and explanation of the relevant framework in order to guarantee that public not familiar with EU law will still have interest in the presentation.

The multilevel configuration of the European Union is often perceived as an inconvenience or source of conflicts in terms of Human Rights protection. However, a systemic analysis of the Union is able to reverse this conclusion and to even facilitate the identification of concrete mechanisms of effective enforcement of the Rights enshrined in EU law. The contribution will mention the structural duties of the Member States in terms of Fundamental Human Rights protection and the mechanisms of their implementation and enforcement, ultimately related to the legal duty of loyalty. To that regard, effective judicial protection will occupy a prominent place. More weight will be given to the mission of the national judge, as ordinary adjudicator of EU law and as agent for the application of his national standards of protection. Indeed, the recent case law suggests that the national judge is empowered to ensure the effective enforcement of the European standards of protection even in cases of systemic deficiencies of her own legal system. She is also enabled to apply higher national standards of protection under the systemic limit of loyalty. Most importantly, in the context of the European arrest warrant, which involves composite procedures between two judicial authorities of two different Member States, the national judge has been confirmed as the best placed to “peer review” the effective protection of rights in a Member State other than hers, thus guaranteeing the effective enforcement of the European standard of protection of the rights of the individual subject of such a warrant.

Ultimately, this contribution ambitions not only to discuss the effectiveness of protection and enforcement of rights in the EU legal system but to “provoke” a debate on the systemic legal aspects of Fundamental Human Rights protection in general, which according to this

contribution, can be transformed from legal boundaries to legal instruments for a better protection of Rights. This, however, requires not only the will to enhance such a protection but also the degree of ingenuity and of legal sophistication demonstrated, for instance, by the national judges at the origin of the case law this contribution will refer to.