

Athens Institute for Education and Research
2017

Role of Law, Human Rights
and Social Justice,
Justice Systems,
Commerce, and
Law Curriculum

Selected Issues

Edited by

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First Published in Athens, Greece, by the
Athens Institute for Education and Research
ISBN: 978-960-598-104-4

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Printed and bound in Athens, Greece by ATINER
8 Valaoritou Street
Kolonaki, 10671 Athens, Greece
www.atiner.gr

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Introduction

David A. Frenkel

This book offers a collection of essays which shed light on issues in various fields of law. As diverse as the essays may look, spanning the role of law, human rights and social justice, justice systems, commerce, and law curriculum, they all deal with issues that are of current significance.

The authors make use of insights arising from jurisprudence, schools of thoughts, history, economy, sociology and the “law and literature” trend, to develop new and creative interpretations and solutions of pending problems. The collection of essays seeks to analyse some of the challenges that society faces in addressing the issues mentioned. They are revised versions of selected presentations made at International Conferences on Law, organised by the Athens Institute for Education and Research (ATINER) held in Athens, Greece. They were peer-reviewed and selected on the basis of the reviewers’ comments and their contribution to the ongoing discussion of the respective issues.

The book commences with Michael P. Malloy’s essay *Encountering UTOPIA: Social Stresses and Responsibilities of the Lawyer*. The essay examines the role of law in society as reflected in Thomas More’s *Utopia*. Malloy argues that, properly interpreted in light of suggestions the author leaves for the reader in an introductory “letter”, the book is about the life of the law and the social stresses and responsibilities of the lawyer.

The second contribution is Roland C. Griffin’s essay *EMIGRES: Lost in a Sea of Ignorance*. Griffin states that austerity grips western nations, where governments spend paltry sums on welfare, refugees, and migrants. In his essay, Griffin parses a trove of knowledge about welfare and what’s being done for needy people. There is a recounting of an Irish case, a report on spectacles in the US, and a narrative about the troubles in Europe stirred-up by Syrian refugees.

In the third essay, *Burden Sharing and Dublin Rules – Challenges of Relocation of Asylum Seekers*, Lehte Roots argues that Dublin Rules, which have set up the principle that a country which allowed immigrants to access its territory either by giving a visa or giving the opportunity to cross the border, is responsible for asylum application and the processing procedure of the application, have put an enormous pressure on the EU countries that are at the Mediterranean basin to deal with hundreds of thousands of immigrants. At the same time, EU is developing its migration legislation and practice by changing the current directives. From one point of view EU is a union where principles of solidarity and burden sharing should be its primary concern, but practice shows that the initiatives of relocation of asylum seekers and refugees is not accepted by some EU members which look at them as a threat to their sovereignty.

Another angle of international law and human rights is dealt by Allen E. Shoenberger, who is the author of the fourth essay *Punishment for Unjust War: First International Court Decision Awarding Damages for Aggression: Will it be enforced?* The European Court of Human Rights held Turkey liable for violation of human rights under the European Convention on Human Rights and ordered Turkey to pay 90 million euros in compensatory damages. Shoenberger points out that this is the first time the Court has awarded such damages for aggressive war making, and is a caution to other nation states.

The fifth essay *'Followers' and 'Failures' of the Disabled Persons' Individual Complaints in the Same European Union (EU) Family* by Ivan K. Mugabi examines the legal impacts the varied conduct of member states might have on the attributes of access to justice by persons with disabilities depending on whether they are living in what the study seeks to call “the following or failing” member states of the Convention on Rights of Persons with Disabilities (CRPD).

This leads us to Assaf Meydani's *The Right to Enjoy Lifestyle in Israel: Encouraging Disabled People to Work*, which is the sixth essay. A welfare state is assessed among other factors by its social and political conduct towards those weaker sections of the population who have to cope with illness and handicaps. Meydani's view is that the practical application of one clause of the National Insurance Law in Israel led to a market failure which in fact hampered the right of the disabled people to a decent lifestyle. In his essay, Meydani reviews the scope of the right to a decent lifestyle when it comes to the right of the disabled person integration in the labour market in Israel.

The seventh essay in this book is *Solon the Lawgiver: Inequality of Resources and Equality before the Law* by Vasileios Adamidis. Adamidis focuses on Solon's attitude towards wealth. In the era of spreading monetisation, there was a conscious effort on the part of the Athenian lawgiver to place limits on the use of wealth and to make economic resources a positive feature, at the service of law and community, rather than the opposite. In the Solonian reforms we find traces of subsequent dominant characteristics of the Athenian legal system, which might offer new insights on the modern manifestations of inequality before the law.

Kyong-son Kang is the author of the eighth paper *Sovereign Person in view of the Abolition age*. Kang reveals the life pattern of the Constitutional Law by delving into the slave systems which had survived for long in England and America. After the abolition of slavery in Europe and the USA, racial discrimination was brought to the surface. As Kang explains unconstitutional institutions and unjust and wrong practice and culture can be done away with by concerted efforts of the community. Those efforts equal the founding of a sovereign person, who is the very type of democratic and republic citizens the constitution requires.

Thomas P. Corbin, Jr. and Godfrey Langtry, the authors of the ninth essay *The Non-Usage of Jury Trials in Papua New Guinea*, comments on the non-usage of Juries in Papua New Guinea (PNG). PNG is a former colonial holding of Great Britain, administered by Australia. Both Great Britain and Australia make use of juries in trials. Nonetheless, PNG did not adopt this practice, though it did adopt much of the other practices in the now mixed system that

uses both Common Law and customary law. Corbin and Langtry take a historical look at the legal system of PNG and discuss the theories behind non-jury system.

This leads us to the tenth essay '*Some Amongst the Great Goods cannot live together*': *Value Conflict, Incommensurability and Civil Procedure* by Dominic J. De Saulles. In their essay the author points out that the overriding objective of the Civil Procedure Rules 1998 is that cases should be disposed of justly and at appropriate cost. The English and Welsh justice system has struggled to deliver this objective, especially when it comes to keeping down costs. De Saulles shows that "justice" and "proportionality" are both umbrella terms. One of the values sheltered by the term justice is that of accuracy of decision making. This sheltered value is the primary one which underpins all others. This explains why the system struggles to contain those costs which relate to making the facts certain in order that the court may make the correct decision. De Saulles therefore argues that the accuracy value should be made explicit within the overriding objective.

The eleventh contribution *Impact of Financial Crisis on Director's Liability: Lithuanian Experience in Comparative Perspective* was written by Valentinas Mikelėnas and Paulius Miliuskas. They analyse certain elements of director's liability in Lithuania which started to appear during the financial crisis of 2007-2008. The authors analyse in particular the general conditions for director's civil liability under Lithuanian law, the prevailing theory of the corporation in Lithuania and its impact on the case law, and the application of the doctrine of "business judgement rule" in Lithuanian courts and its possible evolution after the financial crisis. Mikelėnas and Miliuskas analyse all the above mentioned points from the comparative perspective taking into account both the European trend and common law doctrines that had or might have influence on further development of company law in Lithuania.

This paper leads us to Lavinia-Olivia Iancu's essay *A New Face of the Insolvency Law*, which is the twelfth essay in the book. Until 2015 Romanian legislation had approached only the insolvency of companies. In 2015, the Romanian legislator adopted law on the insolvency of natural persons which came into force in 2016. Despite the vast criticism that can be brought up against the legal text, one should notice that the Romanian Parliament attempted for the first time in modern history to regulate the over-indebtedness of natural persons, providing also solutions for their financial recovery.

Yulia Shabalina is the authoress of the thirteenth essay in this book *The Application of the UNIDROIT Principles of International Commercial Contracts by the International Commercial Arbitration at the Chamber of Commerce and Industry of the Russian Federation and by State Courts of the Russian Federation*. The International Institute for the Unification of Private Law issued the UNIDROIT Principles of International Commercial Contracts in 1994. The Institute is an intergovernmental organization, and has no legislative powers; hence its documents have not been

accepted as a source of binding law. However, the UNIDROIT Principles appeared to be a convenient short and concise legal instrument that businesses

turned to them despite the fact that they are not legally binding. The Russian Federation joined the World Trade Union in 2012. Since then Russia's trade turnover has increased and, consequently, many counter partners from other countries choose Russia as a forum of convenience and the UNIDROIT Principles as applicable law. This article provides an overview of the practice of the application of the UNIDROIT Principles by the Chamber of Commerce and Industry of the Russian Federation as well as by the Russian state courts.

In the final essay in the book *Graduate Employability – How Can Universities Best Meet Student Expectations*, Jason Tucker deals with the role of the university in meeting law students' expectations in relation to future careers. Tucker considers ways in which universities can meet these expectations and draws upon the experience of Cardiff School of Law and Politics which offers a wide range of employability provisions. Special consideration is given to embedding skills and employability provisions into the law curriculum. This includes outlining different models of employability provision, through which law school can support students in developing transferable skills and preparing for their future careers.

Many of the debates analysed are ongoing and the policy and interpretations brought up in the essays will undoubtedly contribute to future course of debates. I hope that readers will find this collection of essays stimulating and insightful reading not only for those who are interested in a particular issue discussed but also to acquaint themselves with current issues.

The views expressed in the essays in this book are the authors' and do not represent, nor are intended to represent, the views of any other individual or body.