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PREFACE

This abstract book includes all the abstracts of the papers presented at the *7th Annual International Conference on Law, 19-22 July 2010*, sponsored by the Law Research Unit of the Athens Institute for Education and Research (AT.IN.E.R.). In total there were 61 papers and 66 presenters, coming from 12 different countries (Australia, Egypt, Germany, Hong Kong, Indonesia, Ireland, Italy, Japan, South Africa, Turkey, UK and USA). As it is the publication policy of the Institute, the papers presented in this conference will be considered for publication in one of the books of ATINER.

The Institute was established in 1995 as an independent academic organization with the mission to become a forum where academics and researchers from all over the world could meet in Athens and exchange ideas on their research and consider the future developments of their fields of study. Our mission is to make ATHENS a place where academics and researchers from all over the world meet to discuss the developments of their discipline and present their work. To serve this purpose, conferences are organized along the lines of well established and well defined scientific disciplines. In addition, interdisciplinary conferences are also organized because they serve the mission statement of the Institute. Since 1995, ATINER has organized more than 100 international conferences and has published over 80 books. Academically, the Institute is organized into four research divisions and nineteen research units. Each research unit organizes at least one annual conference and undertakes various small and large research projects.

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

Gregory T. Papanikos
Director

**Over the Role of the Legislator in
Support of the Parliamentary Representation of Women**

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The Exhaustion of ‘Local Remedies’ in Terms of Article 56(5) of the African Charter: Could its Application be typified as an unwarranted form of Procedural Fencing?

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This contribution examines the provisions of article 56(5) of the African Charter on Human and Peoples’ Rights, which dictates that complaints relating to human rights violations should only be adjudged as admissible after the victim has convinced the African Commission on Human and Peoples’ Rights that local remedies have been exhausted. To be sure, member states to the African Union should not be embarrassed by claims of human rights infringements lodged at international and regional human rights tribunals without first having had the opportunity of resolving such claims at national level. Article 56(5) of the African Charter on Human and Peoples’ Rights serves the purpose of preventing such consequences. Yet, some might argue that this provision serves as a means of creating an unjustifiable procedural fence that, in effect, immunises unwarranted member state violations from judicial scrutiny. After having explored the jurisprudence of the European regional system of human rights protection, and that of the African region, including the ECOWAS sub-regional system on this issue, this paper asks whether article 56(5) could be characterized as an unjustifiable threshold requirement that warrants reconsideration and possible amendment.

The Right to Basic Education of Indigent Learners in Post-Apartheid South Africa

Lorette Arendse

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Renee Koraan

Lecturer, North West University, South Africa

One of the key features of Apartheid education was the gross inequality in the funding of public schools. The financing of public education under the previous regime occurred primarily on the basis of race, with black learners receiving the least. In contrast, the bulk of state funding was spent on former white schools. The effect of this unequal funding system manifested in a lack of basic infrastructure, insufficient learning material, unqualified teachers and overcrowded classes at the former black schools. The converse was of course true for the former white schools. Fifteen years after apartheid has been abolished, the current education system is still characterized by its legacy: former white schools continue to be adequately resourced whilst former black schools are entrenched in abject poverty.

Since 1994, the democratic government has implemented a whole range of laws and policies to ensure that public funding is aimed at redressing this disparity and ultimately aimed at realizing the right to basic education of learners in terms of section 29(1)(a) of the South African Constitution. The financing of public schools is reliant on school fees to a great extent. Because the exact amount of fees charged is determined by the parent community of a school, there is great concern that the public funding system is reinforcing the existing inequality between former black and white schools. This argument is informed by the fact that wealthy (mostly former white) schools can sustain their position of privilege by charging high school fees which enable them to operate on budgets far exceeding those of poor (mostly former black) schools which cannot charge similar amounts. A further concern is that learners are regularly refused access to schools and suffer discriminatory practices as a result of the inability to pay school fees.

This paper examines the extent to which the public funding system has impacted on the right to basic education of learners, in particular those who cannot afford the payment of school fees and other educational costs.

Duel with Mortality: Physician Assisted Suicide v. a Torturous Death

Derrick Augustus Carter

Professor, Valparaiso University Law School, USA

“Growing old is a work of art.”¹ And dying is the *Mona Lisa*.

Every death, like every life, has a moral; a story; a mark; a legacy. Death may be sudden or prolonged; violent or peaceful; honorable or dishonorable; righteous or unworthy; brave or cowardly. Death is very sad, yet through the prisms of reflection, death may be funny, at least years later when the ironies surface and the “dust” settles.

Judging whether life is worth living is the fundamental question of existence. The compelling debate concerning end-of-life decisions are perpetual. The decision in the manner of death reflects on a person’s philosophy in the manner of life. If one could choose the manner of death, one might choose to die quickly and defiantly and another might choose to linger until all hope is gone. Few wish to contradict their lives by dying out of character. Then again, “contradiction” itself is a unique character trait.

To many, physician assisted suicide is the way to go. It circumvents physical deterioration which eradicates a person’s legacy and inheritance. The style of death is frequently more memorable to the survivors than the style of that person’s life. Tubes, bed-pans, helplessness, and debilitation leaves an awfully strong memory. A sordid memory which suppresses the decedent’s vitality and strength in life.

When death is imminent, life takes on a narrower meaning. One’s old friends, relatives, lovers, mentors, children are reduced to singular episodes. One’s regrets and adventures fade into oblivion and perhaps smiles. If one’s papers are in order, insurance in order, probate manners in order, inheritance and property in order, then death itself may be peaceful. *The Mona Lisa*.

We do not invade the domain of the Almighty by discussing the issues of survival and death. The Almighty, argues many philosophers, has reserved the question of survival to Providence. People’s lives are subject to the general laws of matter, motion, and thought. Each person is entrusted to their individual prudence and skill for their survival in the world; and each person has full opportunity to alter the operations of nature.

We encroach on nature in many instances; through war and public executions; through prolonging lives; through great buildings and bridges; through daylight savings time; through a rational and peaceful death – if lucky.

“If one death is accompanied by torture, and the other death is simple and easy, why snatch the latter?” A long extended life does not necessarily mean a better life. Similarly, a long extended death does not necessarily mean a better death.

Every man and woman compromises in life and make their lives acceptable to others, but the choice in the manner of their deaths belongs to them alone – assuming

¹ My father, Ken Carter, who adopted his children.

the choice opportunity exists. There is no occasion when the individual should be humored more than at the moment of death. Out of the humor and sadness and chaos of death, arises harmony, proportion, and a rebirth.

On the Other hand . . .

There is an equally compelling alternate view. The popularity of physician assisted suicide can be reduced to one reason - fear of suffering. Disease, failure, and misery are basic sacrifices. Suffering is the way to a personal, secular redemption. Each suffering blow erases a personal sin. Suffering is good, it's redemption for a life cast in selfishness; in bliss; in risky behavior; in overindulgence; and in greed.

This paper addresses the growing international phenomenon of physician assisted suicide. This is a benign, though illegal, practice to hasten death to avoid perpetual agony during the latter stages of life, when one suffers a terminal infliction. In addressing the manner of death, one must weigh the philosophical discourse of one's purpose in life. Each citizen state has standing to object to the premature euthanatic exercise. As such, the philosophies of Plato, Aristotle, and Socrates are cherished resources.

Law and Economics after the Great Recession

Paul H. Brietzke

Professor, Valparaiso University School of Law, USA

The neoclassical or Chicago School Economics, of Milton Friedman and Judge Richard Posner, bears a large share of responsibility for the Great Recession, in the U.S. and (as the “Washington Consensus”) in most relatively poor and powerless countries as well. After a brief introduction to basic concepts in law and economics—the means by which Chicago School precepts get implemented and enforced—we examine its relentlessly privatized approach: hyper-rational individuals, operating through markets assumed to be near-perfect, automatically benefit society. Government is an inferior, corrupting set of transactions, and a total deregulation of markets is thus in order. Government is thus relegated to ‘night watchman’ functions: guarding against fraud, and enforcing bargains private people make.

Events from 2008 onwards show how silly this perspective is: supposedly-rational people are much given to herd-like behavior; contra Chicago assumptions, people lacked relevant, accurate information, and an understanding of what they did know. (Even the creators of esoteric financial instruments didn’t understand how they operated; they created rather than diversified huge risks.) Policymakers came to see market failures (rather than Chicago’s government failures) as the problem, and regulatory/macroeconomic (basically, Keynesian) solutions. rather than Chicago’s microeconomic solutions; markets cannot and do not cure themselves.

Bureaucrats implementing the Washington Consensus dosed poor and powerless countries with analogous Chicago medicine: prematurely opening finance and capital markets up to dubious practices from abroad, privatizing public enterprises, the deregulation of everything, and deep cuts in social spending by newly-‘night watchman’ governments. This was done through the legal and policy changes needed to qualify for World Trade Organization membership, and for IMF, World Bank, and USAID loans. (These loans enable unstable regimes to remain in power.)

This mess will take some time to reform, primarily through a re-regulation and a heavy dose of European-/Amartya Sen-style welfare economics (both explained).

Making WTO Remedies Work for Developing Nations: The Need for Class Actions

Phoenix Cai

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Developing nations comprise more than four-fifths of the membership of the World Trade Organization (“WTO”). Yet, they seldom participate in the WTO’s powerful dispute settlement process. This is problematic because the WTO is essentially a self-enforcing system of reciprocal trade rights that relies on proactive monitoring by all members. There, use of the self-enforcement mechanism – by initiating cases under the Dispute Settlement Understanding (“DSU”) - is critical.

There are five primary reasons why developing nations do not actively invoke the DSU. This Article argues that the most significant is that the WTO’s remedies do not provide meaningful redress to developing nations. This Article then contributes a workable proposal to the debate on the need to reform the remedies structure of the WTO, particularly in light of the needs of developing nations. The availability of meaningful remedies lies at the heart of any viable legal system.

My proposal entails the use of a litigation strategy for developing nations which relies on a quasi “class action” model. Developing nations would be allowed freer rein to exercise existing third party rights in a manner that allows them to pool their complaints in cases against developed nations. The primary mechanism for this is the regular joinder already part of the DSU. However, the strategy would be strengthened by procedural changes to the right to join as a third party, such as making the right automatic, upon notification to the DSB, for least developed nations.

Each nation would play an active role in the dispute settlement process, but one nation, generally either the nation that is most economically powerful or most experienced in WTO litigation, would take a leading role and serve as the representative plaintiff, much in the way a named plaintiff in a class action might. In the remedies stage, all named parties would benefit, just as all third parties currently do. However, all parties get to aggregate their level of harm, such that the threatened trade retaliation can be equal to the sum of all of the harm suffered by the class. The class can then decide to exercise retaliation collectively, allowing, for instance, the representative plaintiff to impose countermeasures on their behalf. The choice to impose countermeasures individually or in the aggregate would lie with the class. More importantly, the class would have the right to trade the levels of retaliation unevenly within the class. This means that the smaller members of the class could grant the amount of harm they suffered to another class member, allowing that member to exercise retaliation on its behalf.

The strategy can be implemented unilaterally by WTO members with only minimal procedural changes. It has the benefit of not requiring any amendment to WTO documents. It would provide a meaningful way for developing nations to play an active role in dispute settlement. Most importantly, the proposal enables

developing nations to have real clout in the trade arena, thereby making them more invested in the international trading system.

Market Economy Status for Viet Nam: Good Law, Economics or Policy?

David Caruso

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In 2009, Australia, New Zealand and India ('the Countries') were among the first countries to grant Viet Nam full market economy status ('MES'). They did so in the context of respective free trade negotiations with ASEAN, of which Viet Nam is a member. The US and EU, however, continue to treat Viet Nam as a non-market economy, as Viet Nam is not meeting their respective domestic criteria for MES.

The paper has two parts. In the first part, it contends that each of the Countries accorded MES to Viet Nam because Viet Nam refused to accede to the free trade arrangements agreed with ASEAN unless it was granted MES. Second, that MES for Viet Nam is not justifiable on a merits-based assessment of its economy in accordance with MES legislation. Third, that the Countries made policy-based decisions to grant MES to Viet Nam in order to conclude free trade arrangements with ASEAN. Finally, that the economic growth of ASEAN is critical in now affording Viet Nam power to gain MES recognition which it would have difficulty gaining bilaterally, on an objective assessment of its market against MES criteria. In light of this and ASEAN's proactive free trade agenda, the first part discusses the extent to which future trading partners of ASEAN must accord MES to Viet Nam, and to what extent that MES will be policy as opposed to merits based.

The second part of the paper discusses the consequences of Viet Nam being granted MES out of trade policy, as opposed to satisfaction of MES law. The discussion focuses, first, on the measures trading partners must take to preserve the integrity of their anti-dumping regimes and, second, on the viability of merits-based MES criteria given the Vietnamese experience.

Finishing the Race to the Bottom: An Argument for the Harmonization and Centralization of International Securities Law

Eric C. Chaffee

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One of the central causes of the global financial crisis that began in 2008 was the under regulation of the global securities markets. This suboptimal level of regulation is the result of competition among governments throughout the world to attract capital to their national markets by providing securities regulation regimes that place minimal requirements on entities wishing to issue securities. As the financial crisis that began in 2008 evidences, this race to the bottom, as it might be termed, has created under regulation throughout the world.

I propose that the only viable solution to this problem is to create a global securities and exchange commission to promulgate a comprehensive set of regulations for the major securities markets. This comprehensive set of regulations would provide a baseline to which each of the major international securities markets would have to adhere. The race to the bottom would thereby be finished, or at least, an absolute minimum level of securities regulation and enforcement would be established.

Although this proposal might seem farfetched and is likely to create controversy, this is exactly what the United States did domestically in the wake of the 1929 stock market crash by passing the Securities Act of 1933 and the Securities Exchange Act of 1934 to put an end to the race to the bottom among the states. My presentation will explore the viability of a global securities and exchange commission and how such a commission might be created.

Between Images and Realities of Legal Practice: Young Lawyers' Lifestyles

Anna Chronopoulou

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Over recent years, the changes in the legal profession have resulted in a new form of consumer- based lifestyle professionalism. One aspect of this renegotiation of legal professionalism has featured largely in the glossy pages of the brochures of the law firms as a depiction of the relationship between work and leisure within the organisational context of the legal profession, bringing forward a different aspect of the reality of legal practice. Nevertheless, the relationship between image and reality within the context of the profession has been under – researched and under explored demanding, therefore, further examination. This paper seeks to explore this relationship in more depth through evidence produced by empirical data based on a small sample of qualitative interviews. This paper examines the extent to which consumer – based personal lifestyles inform professional identity, by concentrating on young lawyers' lifestyles. More specifically, this research examines and analyses some of the opinions of a small sample of legal educators and young lawyers' themselves on the relevance or otherwise of certain consumer – based aspects of personal lifestyles to ideas of professionalism and legal practice. In doing so, this paper aspires to achieve two main goals: to shed new light to the construction of professional identity and reveal new ways of theorising expectations from the new recruits as consumer – based.

Discriminating against White Workers, Fascist Workers, and Straight Workers: Three Difficult Cases and a Pandora's Attic

Michael Connolly

Lecturer, University of Surrey, UK

The common theme to these cases is that the ground of the discrimination has nothing to do with any characteristics of the victims. However, it has been received wisdom for some time that statutory definitions of discrimination should embrace treatment on the ground of a *third party's* race, sex, sexual orientation, religion, or disability (see e.g. Case C-303/06 *Coleman v Attridge Law*).

Thus, when a white manager is fired for disobeying an instruction to forbid black youths entry to an amusement arcade, he can sue for racial discrimination, because the racism was on the ground of a third party's race (the black youths). This theory was tested when a bus driver and exemplary worker was fired when the employer discovered he belonged to a fascist political party. He was fired because most of his passengers were Asian. His claim for racial discrimination on the ground of the (third party) passengers' race was rejected, a perhaps morally satisfactory, but technically difficult, decision. Thirdly, colleagues harassed a worker using sexual innuendo suggesting he was homosexual, even though they knew he was straight. His claim of discrimination succeeded, even though *nobody's* (not even a third party's) sexual orientation was in question. On policy grounds, this is a good decision, because otherwise victims of such abuse would be forced to 'come out' in order to litigate. Technically though, it takes the concept of discrimination into new territory, or, in the words of the dissenting judge, the decision amounted 'not to a Pandora's box, but a Pandora's attic of unpredictable prohibitions.'

This paper unravels these apparently contradictory decisions and analyses how new legislation tries to deal with them.

The Organization of Social Services in Europe: From Philanthropy to Social Solidarity

Manuela Consito

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The aim of the paper is to examine organization and functions of bodies involved in the provision of social services.

Public and private bodies such as local authorities, cooperative companies, voluntary service's organizations, foundations, charities are involved in planning and concerting the realization of welfare system. In particular in the field of *social services of general interest* the constant evolution of European law it's perceived as a source of uncertainty, as it focuses on the notion of "economic activity". Whilst the case law and European legislation endeavoured to reduce this uncertainty or clarify its impact, they cannot do away with it completely.

As signified in the Communication from the European Commission - *Implementing the Community Lisbon programme: Social services of general interest in the European Union* COM (2006) 177, «public-private partnerships (PPPs) are being used increasingly to provide social services of general interest. In this context, the term "concessions" and the rules concerning their award, as well as the application of the provisions of public contracts relating to the creation of mixed capital entities whose objective is to provide a public service (institutionalised PPPs), should be clarified».

In purpose some suggestions about the developments of European regulations on social assistance could be of interest, as a common system of social protection for European citizens is not yet instituted, due also to autonomy left in this field to each member State. Nevertheless it must be considered that, in the exercise of such autonomy, local and national public agencies are bound to European law, especially to the principle of free movement of persons and to Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 *on the right of citizens of the Union and their family members to move and reside freely within the territory of Member States*.

A Comparative View on EU Competition Law and Policy and Indian Competition Law

Avinash Dadhich

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This research paper focuses on the history and development of Indian Competition law/ policy, Competition authority and adjudicatory bodies and its comparison with European Union counterpart. There is a misconception that India enacted its first competition law in 2002 but the true situation is that it is the updated version of old and first Indian competition law, Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as “MRTP Act”) to comply with the WTO obligations and keeping in view of new development in globalized Indian economy.

Every country has its own specific reasons and needs to develop competition law and Competition Policy. The objective of any competition policy is to promote efficiency and maximize welfare. Especially the difference between developed and developing countries is very importance while we do comparative study. In developing countries competition authorities to be effective new institutions have often to be created, judges and lawyers trained, and the laws understood and assimilated by the corporations and the people.

The present paper not only does comparison in a critical manner but also put forward the assumption that Indian counterpart can take advantage from the vast experience of EU competition law regime. It is further explained that a proper cooperation is required to any regulatory authority to perform efficiently at international level. There are some specific area of competition policy like international cartels, international M&As would be centre focus of proposed Indo- EU competition law regime. The other areas of competition law, abuse of dominant position, anticompetitive agreements and power and duties of competition authorities and adjudicatory bodies will also examined from both sides in a comparative law manner.

Conceptualising International Peace Mediation - Bring Back the Law

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Mediation has emerged as an important resolution technique for armed conflicts in the post-Cold War period (hereinafter referred to as international peace mediation).¹ There is significant discord within international peace mediation discourse regarding its conceptualisation. Difficulties have arisen because there is a lack of consensus of what constitutes international peace mediation, and in creating a clearly defined conceptual framework.² These problems have essentially hindered the potential of international peace mediation to develop as a more effective and successful conflict resolution technique.

Mediation has of course been acknowledged and utilised for a number of decades within law as an effective method of alternative dispute resolution in a variety of areas, including family law, commercial law and more recently in the resolution of medical negligence claims (hereinafter referred to as traditional mediation). As such, a uniform, standardised framework exists within legal discourse on traditional mediation. Three main styles of traditional mediation have been clearly identified and categorised in this legal framework, most typically as facilitative, evaluative and transformative.

This paper considers whether the extant legal framework of traditional mediation is readily applicable to international peace mediation. The paper proposes to explain how the legal framework of traditional mediation can influence the development of international peace mediation as a more effective and successful, conflict resolution tool. The first part of this paper examines the multifarious discourses on international peace mediation underlining the lack of consensus that exists. The paper will then discuss the framework that exists within legal discourse regarding the categorisation of traditional mediation. The paper concludes by explaining the reasons why international peace mediation should be categorised as 'evaluative' mediation, and

¹ Lanz, D., Wahlisch, M., Kirchoff, L., Siegfried, M. (2008) "Evaluating Peace Mediation." Initiative for Peacebuilding; Beardsley, K., Quinn, D., Biswas, B. Wilkenfeld, J. (2006) "Mediation Style and Crisis Outcomes." *Journal of Conflict Resolution*. Vol.50, p.58-86; *Human Security Brief 2007*, Human Security Report Project, Simon Fraser University, Canada - The Human Security Brief 2007 states that a growing number of conflicts are ending in 'negotiated settlements' rather than fought out until one sides prevails militarily and provides statistics on this trend - see *Human Security Brief 2007*, Human Security Report Project, Simon Fraser University, Canada, 2007. The International Crisis Behavior project states that mediation was employed in 131 of the 447 crises which occurred around the world between 1918 and 2005 - See <http://www.cidcm.umd.edu/icb>. The definition of 'crisis' used by this project has two elements: '(1) a change in type and / or an increase in intensity of disruptive (i.e., hostile verbal or physical) interactions between two or more states, with a heightened probability of military hostilities that, in turn, (2) destabilizes their relationship and challenges the structure of an international system - global, dominant, or subsystem' (Brecher & Wilkenfeld 2000: 4 - 5).

² Lanz, D., Wahlisch, M., Kirchoff, L., Siegfried, M. (2008)

how such categorisation can instil a more coherent and uniform framework in international peace mediation.

The Use of Electronic Reverse Auctions in Public Procurement

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The use of electronic communications in the commercial world is ever expanding. Also in the field of public procurement the importance of electronic communication is internationally accepted.

A relatively new trend in public procurement is the use of electronic reverse auctions (ERAs). In a reverse auction unlike a traditional auction, which involves a single seller and many buyers, there is a single buyer and many suppliers. The buyer indicates its requirements, and suppliers progressively bid downwards. The lowest bidder wins the right to supply. Such reverse auctions are often conducted electronically.

Towards the end of 2009 a revised chapter VI which specifically deals with ERAs was proposed for the Model Law. The proposed Revised GPA also specifically deals with ERAs in article XIV thereof.

In South Africa the use ERAs is not specifically dealt with in the public procurement regime. There is in principle no reason why ERAs can not be used in public procurement in South Africa as long as the use thereof complies with the constitutional imperatives for public procurement namely that of fairness, equitability, transparency, competitiveness and cost effectiveness.

The purpose of this paper is to determine whether it is viable to use ERAs in public procurement in South Africa. In order to do so I will deal with some definitions of electronic auctions, how ERA's work in practice, discuss some of the advantages and disadvantages of ERA's, deal with the basic requirements prescribed by the Revised UNCITRAL Model Law on Public Procurement for the use of ERAs and thereafter discuss the possibility of using ERAs in the South African public procurement regime. Some comments will be made in conclusion.

Has the Law of the Republic Indonesia Number 24 Year 2007 Concerning Disaster Management Accommodated Recovery Effort of Psychological Impact of Disaster Victims in Indonesia

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In the last decade, many disasters have happened in Indonesia. Based on the law, the meaning of disaster is the occurrence or a series of occurrences which threaten and disturb society life and livelihood, which is caused by natural factor and/or non-natural factor or human being factor caused victims, environmental damage, loss of means and psychological impact.

In every disaster, the government conducts its role in effort to recover the impact and has obligation to conduct its role as a form of the state's responsibility to its people as is stated in Article 3 Universal Declaration of Human Rights and also in the Constitution of The Republic Indonesia.

The Indonesian government has established Law Number 24 Year 2007 on Disaster Management as the fundamental law and legal guidance in the disaster management.

The Law is divided into three phases of disaster management, which are: pre-disaster phase, emergency phase, and after- disaster phase. As implementation of this law, if disaster happens, the government must conduct disaster management. But in fact, the government's efforts are more focused on the physic recovery (infrastructure) rather than on the psychological aspects of the disaster victims. Even though some psychological recovery is provided, it is still far from ideal. When the period of time of disaster management decided by the government is over, all aids will be terminated, including psychological recovery aids for disaster victims. The fact that psychological recovery is needed for a longer and more indefinite period was never taken into consideration.

We are interested to present our paper in the effort to find out a better disaster management, especially for the recovery of psychological impacts of disaster victims in Indonesia.

Skills Assumptions in Legal Education

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A problem facing most universities is how best to adapt time-honoured teaching methods to the skills and needs of new generations of students. There is strong evidence that legal employers still expect graduates to have the same skills which have long been taught in law schools (E. Peden and J. Riley, 'Law Graduates' Skills – A Pilot Study into Employers' Perspectives' Sydney Law School Legal Studies Research Paper No. 07/81, 5). However, increasing numbers of students show weakness in skills which used to be assumed to be provided by schools and other secondary education providers. The issue is what, and who, is it that needs to change: expectations of universities and employers, or assumptions and practices of students. As noted by many employers of graduates, strong grades at university level are not necessarily an indication of having the necessary skills for entering the job market in any profession. Similarly, strong grades at secondary education level are not necessarily an indication of having strong skills for entering a particular field of study, such as law, at university level; the assumptions which universities make about their incoming students need to be revisited regularly and adjustments to provisions made accordingly. Many academics report that undergraduate law students seem to perform far better in the classroom than in written assessments. In our presentation, we will look at changes in secondary education which lead to different student expectations and skills, appropriate assessment methods and feedback at universities, and whether different models of skills support are now necessary for even the strongest law student at university level.

Audio-visual Recording of Police Interviews in England and France: Lessons for Greece

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The questioning of suspects at the police station is admittedly one of the most critical moments of the criminal process. This extremely useful investigative tool can provide the police with crucial incriminating evidence facilitating the conviction of the guilty, but, at the same time, it can notoriously generate false confessions that often lead to the conviction of the innocent.

In England and Wales, the Royal Commission on Criminal Procedure of 1981 quickly realised the magnitude of the problem, thus recommending the adoption of important safeguards for the suspect. Parliament then introduced the Police and Criminal Evidence (PACE) 1984, which radically reshaped the interrogation regime, and in July 1988, PACE Code of Practice E came into effect, imposing the tape-recording of police interviews with persons suspected of the commission of an indictable offence.

In France, the introduction of the audio-visual recording of police interviews was first considered in the context of a major reform of criminal procedure in 2000, but Parliament finally decided to restrict the application of this measure to the interrogation of young offenders only. Then came the *Outreau* affair, which has shaken and shocked French criminal justice to its core, bringing to the surface endemic flaws of the interrogation regime. The Parliamentary Committee that was set up to investigate this affair of catastrophic consequences for French criminal justice has recommended the compulsory audio-visual recording of all police interviews. Law 2007-291 of 5 March 2007 has subsequently added provisions to that effect to the Code of Penal Procedure.

In this paper I will first of all make the claim that the reasons that have imposed the audio-visual recording of police interviews in England and France are equally present in Greece nowadays. I will then highlight the advantages of this important safeguard, from the point of view of both suspects and the police, but will also carefully sketch the shortcomings that make it obvious its adoption is not a panacea. Finally, I will explain how the audio-visual recording of police interviews in England and France is supposed to work in practice, according to the provisions of the English PACE Code E and the French Code of Penal Procedure.

American Ways of Death

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The intellectual project of understanding how race operates in American culture requires attention to the criminal justice system, where social control and racial hierarchy are entangled in institutional structures. The harshest criminal sanction—the American practice of capital punishment—has long maintained a symbiotic relationship with American racial practices, though comprehension of the nature of that relationship remains surprisingly limited.

In this paper, I seek to develop a deeper understanding of the death penalty's race-defining role in American culture. The methodology I use to promote this understanding is the juxtaposition of two narratives in which the braided history of race and the death penalty are deeply implicated. The first is an account of the case of Walter "Johnny D." McMillian, an African-American man, who in 1993 was released after six years on Alabama Death Row when prosecutors conceded that his conviction for the murder of Ronda Morrison--a white teenaged female who was shot during a robbery in the Monroeville, Alabama dry cleaning store where she worked--was based on police misconduct, perjured testimony, and exculpatory evidence withheld by the prosecution.

It is more than poignant that the setting for the story of Walter McMillian's capital case was Monroeville, Alabama. Monroeville's sole claim to fame is that it is the hometown of Harper Lee and the setting of her 1961 Pulitzer Prize-winning novel *To Kill a Mockingbird*, later an Academy Award winning movie, about the capital trial of a black man falsely accused of raping a young white woman. Every May, Monroeville has a festival in which they reenact the *To Kill a Mockingbird* story.

In this paper, I contend that vital information about the meaning of race in the post civil rights era lies in the startling juxtaposition of the story of Walter McMillian's capital case and the story of Monroeville, Alabama's annual celebration of *To Kill a Mockingbird*. In answering the question of how the people of Monroeville could embrace the book's message while simultaneously re-enacting the book's plot of racial subjugation through criminal justice processes, we deepen our understanding of the mechanisms by which race operates, and the process by which the death penalty participates in giving it content, in late twentieth century America.

Criminal Sanctions in Corporate Governance: A Comparative Examination of French and American Approaches to the Problem of Corporate Waste

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When American lawyers first encounter French corporate law they are often struck by the role that criminal sanctions play in policing potential problems in corporate governance. Although US law provides plenty of situations where a criminal sanction might be applied to a corporation or its officers, it appears that French law uses the criminal sanction more readily than its American counterpart.

This difference in approach is most clearly observable in policing the problem of waste of corporate assets. In Delaware, the leading corporate law jurisdiction in the United States, the concept of waste of corporate assets is a recognized part of corporate law doctrine, but its enforcement lies in a civil claim brought by the shareholders. In France, on the other hand, the analogous idea, *l'abus de biens sociaux*, is a crime punishable by up to five years imprisonment and a fine of 375,000 euro.

The challenge of comparative law scholarship, however, is not to merely point out a difference, but to understand why the different approaches developed and to ask whether it makes a practical difference in the real world in which businesses operate. The first inquiry requires a comparative examination of the role of the state and the attitude of the citizenry toward business. As for whether these difference matter, waste actions are rarely successful in the US while in France prosecutions for *l'abus de biens sociaux* are fairly common and often highly publicized. Might the operation of the law, together with the social norms and the historical legacy of these two countries, help explain observed differences between the US and France in things like executive compensation and golden parachutes?

American Transformations: The World of Edith Wharton and the Advent of American Legal Realism

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Edith Wharton's (1862-1937) literary works, some eighty short stories and over twenty novels, were written during a period in American history of fundamental economic, cultural and social transformation. In the legal world, the consequentialist approach of the pre-civil war courts had been overtaken, by the time American university law schools were established at the end of the nineteenth century, by the orthodoxies of rationalist classical legal thought and naturalistic conceptualism. Against a background of an emerging labour movement, mass immigration, industrialisation and urban expansion, the confidence of the gilded age in the self-regulating freely competitive market place in which increasingly unequal outcomes and unregulated monopolism allegedly attested to the political freedom of individual participants (and were thus protected by the courts) was challenged (inter alia) by the democratic pluralism of William James's philosophical pragmatism, with its radically empirical emphasis on "pure experience", and the experiential approach of influential jurists like O W Holmes. The belief inherent in classical orthodoxy of the possibility of legal reasoning deductively extracting rules from abstract principles was successfully attacked by the thorough going empiricism, positivism, pragmatism, and reconstituted consequentialism of American legal realism with its emphasis on law in action. As Kersoff has argued (*Edith Wharton and the Politics of Race*), although initially disquieted by the threat presented to her own highly privileged social order, as a result of events in her personal life, Wharton came increasingly to think "the democratic volatility of pragmatism preferable to the abstemious regulations of rationalism", at the same time deepening her post-Darwin religious scepticism and reforming her views of nationhood her work took on new themes. Through consideration of Wharton's works, her literary and philosophical milieu and her personal beliefs, the paper examines the interplay and tensions of rationalism and pragmatism and of economic and social change in American society of the period and the influence of these on the development of legal theory and the emergence of the American realist movement.

Ghana Journey: Private Investment, Public Funding and Domestic Reform

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Ghana exports palm oil, pineapple, and cocoa. High taxes on exports and plummeting world prices hurt the economy. Investment in oil and gas, IMF, and World Bank funding can lift the economy. Government can put this money to work on domestic projects, retire domestic currency and, tackling, inflation, fix the supply of Cedi so local money equals demand. This paper explores the idea of pooling foreign money invested in the country, establishing a reserve account from oil royalties for all citizens, reusing foreign funds on rural development, changing lending practices, and reforming the nation's secured transaction laws. As in all cases, foreign land grabs, old habits, and local practices impede development. In this paper, regulation of land use, taxation of income attributable to trading companies, mining, oil, and agriculture get a review. The goal is to identify workable ideas, projects, schemes, and things to fix to lift the country.

**Dealing with Damage:
The Role of Forensic Economics in Litigation Support**

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Millions of people suffer damages every year as a result of accidents and broken promises. If someone's injuries are a result of another person's action, or inactions, the victim is entitled to bring a tort lawsuit and recover a monetized proxy of his or her damages. Computing monetized proxies for damages is frequently a very complex subject. It requires expertise that fall in the field of Forensic Economics. This paper presents a few generally accepted principles on damages that govern the newly emerging discipline of Forensic Economics in litigation support at USA Courts.

The Lost Legal System: Pre-Common Law Ireland and the Brehon Law

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Prior to English invasion and the adoption of the common law in Ireland, a native legal system, now known as the Brehon law, was implemented throughout the country. This native legal system dated from Celtic times and was passed down orally from generation to generation. It was written down for the first time in the seventh century and survived until the seventeenth century when it was finally replaced by the common law. The Brehon law was highly complex and sophisticated. Rights were accrued based on societal status and punishment / restitution was based on the status of the person against whom an offence was committed. The indigenous legal system could be considered to be quite progressive in ways in that divorce was allowed and women's rights were well protected. It was also cognisant of the protection of the environment and nature. The legal system was administered by judges (*brithem*) but there was not a huge role for solicitors or advocates. There was no court system, and a method of law enforcement, in the form of police, did not exist. This paper will describe the roots of the Brehon legal system and its main players. It will analyse its main facets and subjects and will trace its development through Irish history up until it was finally supplanted as the legal system of Ireland by the common law in the seventeenth century.

The Study of the English Legal System and Law on International Students from Non-English Backgrounds and Cultures

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The globalisation of education can, on many fronts, be regarded as a generator of a more broadened knowledge and wealth of experiences for students who study abroad. International education also opens doors to world other views that may even constructively challenge those, with which the student is to date familiar.

In that vein, the study of the law in and from another country (which is often a pre-requisite for non law degrees, such as accounting or business for example), has a plethora of benefits for international students. The study of law provides the student with a more detailed insight into the culture and traditions of the country in which the student is currently studying and can serve as an eye opener for students coming from more traditional and conservative backgrounds.

For example, the myth of the position of women in the Anglicised world is soon debunked, as western women are believed, especially by non-westerners, to enjoy the same freedom and rights as men in all aspects of life, which is not all the case. So, to learn about the rights, duties and liabilities of all citizens and how they came about enables international students to understand, experience and even embrace other cultures and other world views, even if the content and the context of the learning experiences are somewhat removed from any prior learning experiences and can even, at times, appear to be quite daunting, and in the case of law, questionable as to the purpose of its study if the student is not enrolled.

Protecting the Elderly – Financial Exploitation

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As a population ages, protecting the elderly generation from financial predators becomes of paramount concern. The experience, at least in the author's jurisdiction, is that financial exploitation is a significant problem. Exploitation can be outright criminal, such as threatening to withhold medical care if assets are not transferred or fraudulently conveying assets under a professional's management. It can also be more innocuous, yet no less detrimental, such as over-compensating caregivers because the vulnerable adult "wanted" it to be done. Aged adults are being taken advantage of by both family members and professional caregivers, by financial advisors and medical providers.

Various jurisdictions in the United States have passed legislation to protect vulnerable adults from being financially exploited. The effectiveness of the legislation is still in its infancy and the statutes need additional review to determine if they are being under-inclusive, over-inclusive, or both.

The paper will examine the nature of the financial exploitation problem generally, including a brief discussion of the maladies facing the elderly (Alzheimer's disease and other dementia, physical ailments, etc.), a discussion of the current statutes in place to protect the elderly, and finish with model legislation designed to maximize the protection of vulnerable adults.

Additionally, remedies – both compensatory and punitive – will be examined. The ability to punish wrongdoers is central to an effective scheme to prevent financial exploitation. The paper will examine the approaches various jurisdictions have taken. The paper will also present model remedy language in an attempt to prevent the over-inclusive nature of many statutes currently in place.

Respect, Dignity and Violence in the Honor Cultures of Urban Street Gangs

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The behavior and persistence of Urban Street Gangs in society remains a perplexing problem, especially in light of the tremendous resources that the state has invested in both police and social assets in an attempt to gain control and dominion over these groups. However, Urban Street Gangs and the violence they generate both internally and externally are ubiquitous inner-city social phenomena not only in urban America but also in major cities around the globe. This paper suggests that these inner-city Street Gangs should be reimagined, to the extent that they exhibit many of the distinctive qualities of classic cross historical and cross geographical Honor Cultures. This paper argues that as suggested by the classic political philosopher Thomas Hobbes, when people determine that they live in a state of nature in which life is “poor, nasty, brutish, and short” they naturally come together and organize a social collection based on “wariness, fear and mistrust.”

This paper proposes to take a new, reimagined, and innovative look at the Urban Street Gang phenomena and its relationship to organized legal authority and to analyze it from the perspective of the evolution and dynamic of Honor Cultures. These are cultures that seek to gain control over physical and psychological space; where respect and honor and a sense of personal dignity are the predominant values. This view is in stark contrast to the traditional social and state view of Urban Gangs, simply as an unorganized response to social disorganization and lack of familial and community social controls. The perspective advocated in this paper is both incisive and productive, because traditionally in an Honor Culture, you are what you command – what you protect – for which you are willing to kill or be killed. Similarly, in the Urban Gang value structure, violence is the medium by which property is accumulated, controlled, commanded, and through which lives are risked, taken and lost. The Urban Gang structure is a type of alternative and organized social order seeking to improve the competitive advantage of its members in obtaining significant increases in limited psychological and material resources. Part of these psychological resources is the sense of control of physical and psychic space, and is enforced by violence against the state and other perceived outside threats. This is important because Urban Gangs flourish in overcrowded environments where there is only a very limited amount of physical and psychological space over which one can assert personal and interpersonal control; coupled with a tight social reign imposed by the legal authority of the state.

Based on this alternative view of the motivation, make up and dynamic of the Urban Gang, it is easier to appreciate why they are so resistant to the legal authority of the state. In an environment where respect, honor and a sense of personal dignity are predominant values, members of Urban Gangs are disrespected, dishonored and subject to personal indignities publicly, by the police and other state actors both

structurally and on a daily basis. This creates a natural antagonism between Urban Gang members and centralized state authority. It is not necessarily that members of these gangs have no respect for the law generally, but rather, they believe that the law has and shows no respect for them or their community. Thus the structural innovative interventionist strategy for the state to make in more successfully dealing with Urban Gangs and the violence they perpetuate, is to train its actors - police officers, social workers and the like - to show greater and more demonstrable degrees of respect and honor and an appreciation of the value of the sense of personal dignity of the members of the gangs, and the communities that support them. This paper concludes that through retraining state actors, and reimagining the organizing and disciplining values of respect, honor, and dignity the natural antagonism between Urban Gangs and state sanctioned authority, such as the Police, as well as the rest of organized society, can be reversed and much more successfully reformulated.

The WTO and Public Health, access to Essential Medicine in HIV/AIDS: The Developing Countries Perspective

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The widespread of HIV/AIDS in the contemporary world especially in sub-Saharan African countries seems to defy solution and at best could be described as a global emergency or an attack to mankind. It becomes more complicated when the developed countries treat this issue as the problem of the developing world through the insensitive and difficult policies they maintain towards access to Anti-Retroviral (ARV) drugs for HIV/AIDS.¹ The Doha Development Round of the Trade Negotiations in the World Trade Organisation (WTO) as a development mechanism in Trade Related Intellectual Property Rights (TRIPS)² and Public Health, devised a temporary solution through 'Compulsory License' to enable developing and least developed world who lack the capacity to produce essential medicine to do so in a cheaper, affordable, and accessible way. However, this is not an end in itself. Unless these affected regions are rooted towards the production of these medicines themselves, putting in place such factors as infrastructure, technology, logistics and expertise in their localities without allowing them to go through the technicalities of getting permission for compulsory license, it would amount to man's inhumanity to man, allowing lives to be traded as goods for material gains. As Paul Farmer stated, "Our response to AIDS has so far been a failure."³

This paper will explore the issues of patenting HIV/AIDS drugs by assessing the Intellectual Property Rights in relation to developing countries especially sub-Saharan Africa and evaluating the legal mechanisms available to them to protect these rights.

¹ See Frederick M. Abbott, 'Public Policy and Global Technological Integration: An Introduction', 72 *Chicago Kent Law Review* 345, 346 No. 3, 1996

² TRIPS Agreement is a nexus of the new integrated World Trade Organization (WTO), which compels all members of the WTO to form high levels of Intellectual Property Rights (IPRs) protection, and to execute such protection inter alia through "Patent" protection. See Agreement on Trade Related Aspect of Intellectual Property Rights, Apr. 15, 1994, Marrakish Agreement Establishing the World Trade Organisation [hereinafter WTO Agreement], Annex 1C, Legal Instruments- Results of the Uruguay Round Vol. 31; 33 *I.L.M.* 81, 1994[hereinafter TRIPS Agreement] entered into force on January 1, 1995

³ See Paul Farmer, 'AIDs as Global Emergency' Editorial 2003, Vol. 81, No. 10 *Bulletin of the World Health Organisation* 699

Reflections on the Relationship between International Justice and Peace in Africa

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Since the end of the cold war, Kofi Annan and Ban Ki Moon have repeatedly expressed the view that there could not be any peace without justice. This paper aims to reflect on the role played by international justice in the peace process of post-conflict states: does international justice always play a beneficial role in the maintenance of peace or is peace sometimes better served by forgetting about the past and focusing on reconciliation? In recent years, different approaches have been adopted to different African situations: From an *ad hoc* International Criminal Tribunal in Rwanda, to an internationalised Special Court (linked to a Truth and Reconciliation Commission) in Sierra Leone, to finally arrive to the use of an International Criminal Court in the Great Lakes Regions, Sudan and Kenya. In the process, international justice has been subject to numerous criticisms, *inter alia* by Africanists, for having forgotten the essential aim: to restore and maintain peace. It is therefore important to provide an analysis of the efficiency of the different approaches adopted, and whether they have always been the most appropriate ones in unstable states and regions.

Climate Change at the Edge of Legal Rationality

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Given that the annual Conference of the Parties is a treaty-mandated meeting of an international legal institution, one could not be faulted for framing the meeting in legal terms and expecting the success or failure of the meeting to be measured in legal outcomes. Yet like the smoker who knows as a rational fact that smoking cigarettes will likely cause his or her death, societies are not only unmotivated by the rational facts offered by natural science or economics when it comes to climate change, they are equally unmotivated by the rationality of the solutions offered by law. We have the scientific facts: Climate change is real, humans are largely responsible for it, and it is causing irreversible change to our natural environment in ways that will hurt human beings, especially the poorest of human beings. We have the economic facts: doing nothing now to curb climate change will ultimately cost us more than doing something now. And we have the legal facts: the Kyoto Protocol expires in 2012 and at present we have no further global agreement to address the global problem of climate change. During a CNN debate in December, 2009, Yvo de Boer, Executive Secretary of the UNFCCC started his answer regarding the causes of the problem by saying “ethics.” Stopping climate change requires changing lifestyle, transportation, and consumerism—it is admittedly complex, according to de Boer. The idea that ethics might accomplish what law has not was scoffed at by US Vice President Dick Cheney who dismissed energy conservation as a matter of “personal virtue,” but no basis for energy policy. Maybe he was right about the first half of his equation—it is a matter of ethics. What he was wrong about was that ethics cannot be energy policy. Adil Najam, Nobel Prize winner from the UNFCCC, speaking in Bonn recently said that he wanted to “turn the climate change problem on its head. Climate change is about development for most people in the world, and development is not aid, it is adaptation.” This paper will consider the role of ethics in mitigation, while using law to address development and adaptation.

The Political Economy of ASEAN Integration

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Regional integration has become a prevalent trend with the rise of globalisation and captured the attention of social scientists, economists and jurists in the contemporary era. A successful regional integration model, which European Union is undergoing, may refer to extensive trade liberalisation, trade facilitation, convergence of domestic laws and settlement systems. Whereas, integration in Southeast Asia might far more satisfactory, since apparently, ASEAN presents the unification of the Southeast Asia nations with enormous diversities in religion, culture and historical development, in fact, the ASEAN integration is merely the casual conjunction of local, regional and international initiatives. It is therefore essential to scrutinize what these ways to comfort divergence are and why they are being done in the bizarre “ASEAN Way”, to what extent the general political theories of regional integration and economic theories of regionalism can be accommodated in Southeast Asia, what are the prospective initiatives for regional integration through examination of various integration theories along with a cultural and historical microscope. Due to the collective efforts and political sacrifices of comparative small countries on promoting the regional stability and intra-regional prosperity, ASEAN is economically and geopolitically of great significant in Asian Pacific since 1967. Economic Integration can be contemplated as trade liberalization, trade facilitation and fragmentation of production distribution networks. In this section, it is going to prove that European Economical integration could be a model followed by the Southeast Asia states. Different historical tracks identified regional integration in Europe and Southeast Asia in political integration levels, notwithstanding, both regions are struggling with similar challenges on the same boats, ranging from institutional reforms and monetary cooperation to international crisis management. To compare Europe and Southeast Asia in terms of economic integration levels, the paper will explore the economic analyses and the historical practices for intra-regional trade to identify the stages of ASEAN economic integration.

The Ethical Duty of Corporate Lawyers: Should they be Gatekeepers?

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It is important to understand the distinction between the lawyer as advocate or litigator and the corporate lawyer.

Corporate lawyers usually advise on an *ex ante* basis and could (traditionally at least) be seen as ‘wise counsellors’ who had a continuing relationship with their clients unlike the litigator who was more usually hired to assist the client with a particular matter.

Corporate lawyers are thus typically in a position to point out the implications of various courses of action to their clients and thus to influence the client’s conduct. This means that corporate lawyers are in a position to guide their clients into adapting appropriate moral conduct.

It can be argued that the greater use of in-house lawyers makes it less likely that the outside corporate lawyer will act in the traditional ‘wise counsellor’ role.¹ However, this argument is not entirely convincing as the outside lawyer would still be consulted on an *ex ante* basis and is also more likely to be less reliant on one particular client for its income.² By contrast, in-house lawyers can hardly be described as independent professionals as they are *entirely* dependent on the one corporation to pay their salaries. Corporate lawyers are particularly occupied with negotiating, planning and structuring of these business transactions. However, they have also assumed greater responsibility for assisting clients in preparing disclosure documents and shareholder communications. And it is particularly when fulfilling these functions that investors have come to rely on the verification role of the corporate lawyer.

Considering this, the question may validly be asked whether it is realistic to expect the lawyer to also consider the public interest in addition to the wishes of the client. The paper will explore this question.

¹ See Coffee, *Gatekeepers* (2006) p194.

² This is particularly so due to the growth in large law firms and the accompanying lateral mobility of the specialist partner. See Coffee pp223-229 for a discussion of the growth of the role of ‘a house counsel’ and the accompanying change in the role of outside counsel in the U.S. He argues that this has led to a fragmentation of work and responsibility.

The Goals of Chinese Judiciary: Harmony vs. Justice

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Herbert A. Simon, a winner of the Nobel Prize, argues that the term of “organizational goal” may be used to refer particularly to the role which is defined at the upper levels of the organizational hierarchy.¹ This paper tends to explore the goals of Chinese judiciary set up by state leaders: harmony and justice. Harmony lies at the heart of Chinese culture and consists of an important part of traditional political and legal philosophy. It has been reinforced recently in a series of important leading Party conferences. Justice is a concept much discussed by foreign scholars. It was raised for Chinese judiciary when Xiao Yang elucidated the idea in his New Year message for 2001.² After a brief review of the history of harmony and justice, this paper tends to draw a comparison between harmony and justice. It finds that justice emphasizes the similar treatment in like cases while harmony depends on situational appropriateness; justice is usually associated with legal rules while harmony entails a holistic evaluation of legal and non-legal factors; justice has a human rights built in while harmony sometimes requires one to concede or even sacrifice some private interests in favor of his community. This paper goes on to argue that the justice notion has prevailed within the judiciary and turned out to be a somewhat popular faith in adjudicative work because of the nature of the court and the mass import of foreign laws. On the other hand, this paper finds that when existing laws fail to suit the ever-changing circumstances and strict application would sacrifice some big objectives, harmony is likely to be brought into play. A study of the goals of Chinese judiciary helps to evaluate the compatibility between imported norms and local culture and explore judicial decision making model in China.

¹ Herbert A. Simon, ‘On the Concept of Organizational Goal’, *Administrative Science Quarterly*, 9/1 (1964), 2.

² Xiao Yang, ‘Gongzheng yu xiaolv: xinshiji renmin fayuan de zhuti (Justice and efficiency: theme for the judiciary in the new century)’, *Fazhi ribao (The Legal Daily)*, 3 January 2001, sec. 001.

The Compliance of State Preventative Detention Laws with International Human Rights Law

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In various States, the preventative confinement of a suspected terrorist has been part of a national counter-terrorism strategy following the terrorist attacks in the United States on 11 September 2001. Preventative detention is seen as one mechanism by which a State can extend its capacity to respond close to the time of a terrorist act. All preventative detention orders can be generally described in the following way:

Preventative detention is an order permitting a person to be taken into custody and deprived of their personal liberty [‘detention’] by executive order [‘executive order’] for the purpose of either preventing an imminent terrorist act or preserving evidence of a past terrorist act [‘preventative purpose’].

Preventative detention, therefore, eschews the ordinary features of the rule of law and the distinctive features of a State criminal justice system. Decisions of the executive arm of government authorizing detention are based on predictive criminal conduct rather than as punishment for a proven transgression of the criminal law. As internment is precautionary in that no criminal offence has been actually committed, the detainee is not subjected to any charge nor, in a usual case, even afforded the opportunity of recourse to judicial authority or trial before a competent legal tribunal.

This paper considers whether the practice of preventative detention is lawful in international law, and in particular pursuant to the terms of Article 9(1) *International Covenant on Civil and Political Rights*, and with reference to Article 5 of the *European Convention on Human Rights and Fundamental Freedoms*. The findings in this paper present a challenge to State Governments to amend or repeal preventative detention law to comply with the provisions of international human rights law.

Duty of Disclosure: Both for the Insured and Insurer

Mahfuz

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Uberrima Fides is an integral part of an insurance policy. English law requires both the insured and insurer to maintain good faith. The main pressure of this rule goes to the shoulder of the insured by way of duty of disclosure before taking policy. S.18 of Marine Insurance Act says that an insured has to disclose every material fact before taking policy. The material fact is defined by the law as a fact that is taken by the insurer in weighing up the risk. In many cases the lay insureds get confused what fact shall be material to be taken by the insurer in weighing up risk. If the insured fails to disclose the insurer becomes entitled to avoid the contract regardless of his innocence. Accordingly, the insured loses everything. It seems work like a trap.

To get rid of this trap the Law Commission recommended to abolish volunteering information and to require the insurer to ask question that he wants to know. In doing so the insurer is allowed to ask general question which shall again push the insured in similar trap. The recommendations are further ineffective due to the loopholes left in there. The loopholes include the non-consideration of inadequacy of current law on insurer's pre-contract duty of disclosure. The inadequacy of the law has been allowing the insurers to take chance against the insured. Such as, the Drake Insurance plc gambled by insuring more people than their actual capacity. Consequently, an insured would want to know about an insurer before keeping his trust on him for a time when his life would depend on that insurer. As such the law should impose strict duty of disclosure on the insurer along with reformed the duty of disclosure by insured in a reasonable manner.

**Encountering Antigone:
Personal and Civic Duties and the Art of the Advocate**

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Sophocles' *Antigone* is a cultural icon of the "Law and Literature" movement, because it allows us to examine important themes of personal and civic duty against the background of legal obligation. It is also, on its own terms, a beautiful and compelling work of art that transforms law and advocacy into a moving experience. This paper analyzes the timeless conflicts presented by *Antigone* and reflects upon the lessons that the drama offers us in our contemporary conflicts. In light of these reflections, the paper concludes that *Antigone* has a special role to play in the pedagogy of the "Law and Literature" movement. The elemental power of Sophocles' dramatic art makes abstract concerns about the nature of legal obligation a very personal and concrete experience for the audience and for the student of law.

The United Nations and Human Rights: A New Light for the Charter

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In the past years, the United Nations Security Council resolutions have been brought to the scrutiny of Courts and Tribunals for interpretation of states' obligations pursuant to the resolutions in interaction with norms of international human rights law. Indeed, the Security Council work has dramatically increased these last decades, with peacekeeping interventions requiring expanded mandate and security threats leading to the establishment of new types of sanctions regimes. Since the UN Charter's signature, human rights law has also developed drastically creating additional obligations for states parties. As a result, states are more and more frequently placed in a situation where they must chose between an obligation over the other, often leading to sacrifice human rights protection to implement peace and security obligation. While many claim that article 103 of the UN Charter settles the issue of a hierarchy of norms, placing Security Council resolutions over human rights, the extend and application of such hierarchy remains very debated. The paper will suggest that the interpretation of the United Nations Charter have to take into account the evolving context of international affairs and international law, proposing a new interpretation of Article 103. The extent of the Security Council's interventions and the expansion of human rights law could not have been entirely foreseen by the drafters of the United Nations Charter, providing a *raison d'être* for the principles set out in article 31 of Vienna Convention, in particular Article 31 3(b), which stipulates that a treaty shall be interpreted in the light of "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation".

Dying to Come to Australia: Alternatives to Refugee Protection

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This paper considers practical alternatives to processing of asylum seekers arriving in Australian waters without valid visas. Under the Refugee Convention it is not illegal for persons to seek asylum without valid visas as it may be impossible to obtain a visa when fleeing persecution.

Redirecting asylum seekers intercepted in Australian waters to the country of first asylum where claims can be processed by the UN, together with impounding of vessels used in people smuggling are discussed as proposed alternatives. The usefulness of prosecuting the captain of the vessels used in people smuggling is discussed. Further discussion of altering the narrow definition of 'refugee' in the convention to recognize other valid reasons for seeking refuge considers the consequences of rising sea level on Pacific Island nations.

The paper suggests asylum seekers can be returned to a UN centre in the member country nearest their country of origin to have claims for refugee status determined. The international obligations of member states can then be determined fairly and safely. It would also act as a deterrent to other asylum seekers travelling to Indonesia attempting to reach Australian territory if passengers knew they would be returned to the member country nearest their country of origin for processing. For example, Afghan asylum seekers could have their claims determined in Pakistan.

A new Protocol altering the definition of 'refugee' under the *Convention Relating to the Status of Refugees 1951* to include persons seeking refuge from harm, including environmental harm that is predicted as a consequence of rising sea level, would allow more expedient processing and avoid unnecessary trauma to genuine asylum seekers .

Redirecting asylum seekers to the UN centre closest to their country of origin could avoid the drownings and destruction of vessels by fire that have occurred in Australian waters in the past.

Compatibility Disputes in Oceans, a New Source of Legal Controversy in the Years to Come

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The recent report of the United Nations on the state of world fisheries is extremely disquieting with regard the future of living resources in oceans.¹ According to the reported data about 28 percent of stocks were either overexploited or entirely depleted and thus yielding less than their maximum potential owing to excess fishing pressure. A further 52 percent of stocks were fully exploited and, therefore, producing catches that were at or close to their maximum sustainable limits with no room for further expansion. Only about 20 percent of stocks were moderately exploited or underexploited with perhaps a possibility of producing more. Overall, 80 percent of the world fish stocks for which assessment information is available are reported as fully exploited or overexploited and, thus, requiring effective and precautionary management. The scientific evidence is now overwhelming. Overexploitation of marine resources presents very serious global risks, e.g. the marine biodiversity and human nutritional security, demanding an urgent global response as the oceans represent no more an *imperium sine fine*.

Article 7 of the ‘United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks’² established the principle of compatibility. This principle, in short, stipulates that conservation and management measures taken within the national Exclusive Economic Zone (EEZ) and those taken on the adjacent high seas should be compatible. However, the aforementioned principle has been regarded as representing one of the most controversial elements in the new law of the sea regime. The ambiguity lies in the existent legal uncertainty about the measures which should be regarded as the basis, i.e. which measures must be compatible with what measures. Shall the measures employed by a Coastal State be extended beyond its EEZ, thereby extending its exclusive jurisdiction to parts of the high seas which are unsusceptible to unilateral restriction? Or shall a Coastal State adjust its measures to those taken on the high seas, thereby subjecting its exclusive jurisdiction to external dictations? The above controversy becomes more acute in the shade of the doubtful application that the available disputes settlement provisions under the 1982 ‘UN Convention on the Law of the Sea’³ might have on this kind of disputes. In addition to the limitations on the applicability of dispute settlement procedures, available to be invoked by Coastal States with regards to their sovereign rights in EEZ, the specific

¹ F.A.O. (2009) *The State of World Fisheries and Aquaculture* FAO Fisheries and Aquaculture Department (United Nations Publications, Rome), at p. 7ff.

² [2167UNTS3] Signed at New York on 4 August 1995 and entered into force on 11 December 2001.

³ [1833UNTS3] Signed at Montego Bay on 10 December 1982 and entered into force on 16 November 1994.

pre-Agreement case law reflects a portentously discouraging treatment of the principle of compulsory adjudication, e.g. the *Southern Bluefin Tuna Case* (Australia and New Zealand v. Japan).¹

¹ [39 ILM 1359] Jurisdiction and Admissibility - Arbitral Tribunal constituted under annex VII of the United Nations Convention on the Law of the Sea, Award of 4 August 2000.

Greeks on Sovereignty

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The Greeks and the idea of sovereignty

Κυριαρχία or sovereignty? Did the classic Greeks have a conception about what sovereignty was? Did they define, analyze, and study it?

Sovereignty within the general literature. Herodotus

In The History (or Histories)¹ what results interesting to us is that the word sovereignty is used with a similar meaning as the one we currently use in political science but in a completely different context: individual relation. At that time the term sovereignty implied freedom of will. In all and every single passages of The History we observe it is always related to a female character. Why is that?

Plato

We could fairly say that political life started since the day two people had any kind of issues together; therefore, almost the inset of humankind. However, we agree with Barker that the “[p]olitical thought begins with the Greeks²”.

And the notion of sovereignty was there without a conceptual name. “In a word, the struggle of the Few and the Many gave impulse to the development of political theory in Greece [...]”³. And the Greeks were the first culture in history that started not only living this reality but analyzing and conceptualizing it.

We focus our attention on The Republic, The Statesman and The Laws.

Aristotle on sovereignty

We shall focus our attention in two of these masterpieces: the Politics and the Nicomachean Ethics.

For our last words about the Greek philosopher, like Plato, “Aristotle’s repeated insistence that, whenever possible, laws and not men should be sovereign⁴”. Is there a change of sovereign then? The answer is no. We have to understand this idea of sovereignty of law coherently. Plato and Aristotle wants a virtuous ruler who can be able to represent the common will of the population (the real sovereign).

¹ We shall use the version from <http://classics.mit.edu/Herodotus/history.html> (from <http://classics.mit.edu/index.html>) when transcribing and referencing.

² Barker, Ernest, Greek political theory: Plato and his predecessors, Methuen & Co., Ltd., 1951, p. 1.

³ Barker, Ernest, Greek political theory: Plato and his predecessors, Methuen & Co., Ltd., 1951, p. 4.

⁴ Johnson, Curtis N., Aristotle’s theory of the State, Macmillan, 1990, p. 133.

A Prognosis for the Rotterdam Rules in the Light of the Hamburg Rules: Déjà vu?

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Against the backdrop that the existing carriage of goods by sea rules had become untenable, the Hamburg Rules was adopted in 1978 as an improvement upon the inadequacies in the Hague-Visby Rules. These inadequacies have been attributed to a number of factors, including the narrow political base and the imbalance in the provisions of the Hague-Visby Rules wherein carriers were protected from nearly all liabilities, to the detriment of the cargo owners. But the Hamburg Rules has so far fallen short of reaching its aim of fairer apportionment of liabilities between the carrier and the cargo owner since not many countries have ratified it. As a second bite at the cherry and in a bid to address these inadequacies while bringing the legal rules up to date with current transnational commercial practice, the Rotterdam Rules was adopted by the UN General Assembly in December 2008.

In its making, the Rotterdam Rules closely followed the pattern adopted in the making of the Hamburg Rules; similar interests are represented and the two Rules are UN Conventions as well as embodiments of transnational legal rules. Lauded as the breakthrough document on carriage of goods and as the better legal document of the two, the Rotterdam Rules nevertheless evokes a sense of *déjà vu*: have we not seen it all before with the Hamburg Rules? Thus, one questions whether there are any indications that the Rotterdam Rules is merely a reincarnation of the Hamburg Rules save for a few modifications; so that there really is no need for the Rotterdam Rules? What chances of success does the Rotterdam Rules have in treading where the Hamburg Rules has tread and failed? This article will explore these questions with a bid to making a forecast as the future of the Rotterdam Rules.

Human Right: Religious Education of Minorities in the Ottoman Era

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In here first will be explored briefly minorities and their rights how it was practiced in the Ottoman era. The Ottoman state “was a classic example of the plural society.”¹ What was the main frame of the Millet System? Why the Ottoman Turks provided autonomy to religious minorities. Many believed that “poly-ethnic and multi-religious society worked. Muslims, Christians, and Jews worshipped and studied side by side, enriching their distinct cultures. The legal traditions and practices of each community, particularly in matters of personal status-that is,-...- were respected and enforced through the empire.”² Second, it will be looked at schools of minorities with the special focus on religious education. Here it will be argued that state should not discriminate its minorities because of their religious beliefs and religious education for minorities should be left to religious groups with a light control of the state. It is the only way to preserve religious groups their own ideas and ways. The classic era of the Ottoman model successfully provided that. Classical era Ottoman practices actually provide a better answer to eliminating the injustices and acute failure of liberal democracies when it comes to the protection of religious minorities. Particular issues to be taken into question include a closer analysis of the elements of the Ottoman Millet system in terms of religious education that seems to make it a greater example of tolerance for minorities.

¹ See Benjamin Braude & Bernard Lewis, “Introduction” in *Christians and Jews in the Ottoman Empire: the Functioning of a Pluralist Society*, Volume I, Benjamin Braude & Bernard Lewis, eds. (NY, London, Holmes & Meier, 1982) at 1. This is two volume collection about the Ottoman Turks.

² Id.

A Sociological Essay on William H. Brown and the Practice of Law, Part 11

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This essay focuses on the career legal practice of William H. Brown, III, especially his work in a complex organization such as his Philadelphia law firm in the U.S. Brown's primary legal practice was employment discrimination, as he was known as one of the top employment discrimination lawyers in the world, as reflected in his membership with the international academic of trial lawyers. This essay details the processes by which an American lawyer develops a professional practice and expertise, including consulting with businesses on best employment practices, as they become in line with the 1964 Civil Rights Act. This act involves fair employment practices. This essay further details how Brown's legal practice reflects two major approaches to alter gender and race inequality in employment practices. The first deals with a 1972 AT&T employment discrimination case, as the case developed a "disparate impact theory" to employment inequality. After a few decades, this "theory" was altered by the U.S. Supreme Court, leading to a new professional practice and organizational approach to diversify the work place. This essay provides sociological insight into this new organizational approach to employment discrimination cases at the trial court level, using a recent United Parcels federal trial court matter as a case and point. Brown, who played a vital role in the early 1970s in his position with the Equal Employment Opportunities Commission in the U.S in securing upper-level management opportunities for talented African Americans and Women with AT&T and major oil corporations throughout the nation, also becomes the central point of discussion in this essay, showing sociologically a move toward altering discrimination in employment practices through social and intellectual approaches in organizational practices and in public policy matters, and in legal careers, as exemplified by Brown.

Restorative Justice in the International Criminal Court? The Role of Victims in International Criminal Law

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Traditionally, victims of violent crimes played only a minor role in the common law criminal justice system other than in their function as witness, whereas most civil law systems grant victims a role close to this of the prosecutor. However, during the last decades the notion that the victim has part of the ownership of the criminal case and therefore an important role to play has been developed in many common law countries. Procedures have been adapted and the research in victimology grown impressively.

This development has been reflected in international law in the advance of victims' rights movements and the emphasis on restorative justice. Building on the experience of the two UN ad hoc tribunals, the ICTY and the ICTR, which have been criticised for marginalising victims, the International Criminal Court (ICC) deals extensively with three aspects of victims interest: 1) participation of victims at different stages of the proceedings 2) protection of victims and 3) reparation and compensation of victims. In its treatment of victims in their own rights, rather than just in their role as witnesses the ICC is the most innovative and progressive international court. However, the special nature of the crimes before this court as well as the difficulties arising from international investigations and procedures mean that all three aspects raise many problems. Indeed, some of the first decisions regarding the first case before the ICC deal with the role of victims.

This paper addresses the special problems of victims in the international criminal justice process and explores to what extent restorative justice can be achieved in international criminal law.

Red Bull Gives you Wings - Regulating Food Drugs

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The energy drink, Red Bull, represents an ongoing challenge in the regulation of 'drug foods' (Mintz) and the 'pharmaceuticalisation of everyday life' (Fox and Ward). Drawing on the classic work of anthropologist Sidney Mintz who described sugar as the 'quintessential drug food', as well as regulatory theory and the sociology of food and drugs, this paper examines the diverse international responses to the regulation of Red Bull and possible future regulatory responses to new 'drug foods'. The paper rejects the positivist model which currently informs regulatory debate but also argues that deviance models may prove inadequate in the face of the disappearance of the ideal of the natural body. The paper concludes that the predominant regulatory model in the future will be a risk model which effectively displaces public debate by individualising the ethical and social questions of meaning which deviance models have historically brought into the public sphere.

Dignity and Equality: Lessons from the United States and South Africa about the Importance of Integrated Schools

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I teach Comparative Constitutional Law in the University of Florida's summer abroad program at the University of Cape Town in South Africa. Realistically, I see little possibility that South Africa's schools will ever be integrated. Yet South Africans are deeply committed to achieving racial equality and explicitly protect dignity in their new Constitution.

In contrast, the integration of public schools in the United States has been of paramount importance and inextricably tied to equality since the Supreme Court ruled *de jure* segregation unconstitutional in 1954 in *Brown v. Board of Education*. *Brown's* holding that "separate is inherently unequal" is indelibly etched in the minds of almost every equality-minded American. Curiously, in 2007, the U.S. Supreme Court held in *Parents Involved* that public school authorities who want to achieve racial diversity in their K-12 schools are not allowed to consider the race of prospective students.

My studies in South Africa and the decision in *Parents Involved* make me ask: Is it possible to achieve racial equality if schools are not integrated? I do not think so because, although dignity is not explicitly protected in the U.S. Constitution, *Brown's* mandate to integrate public schools was premised on acknowledging and protecting the human dignity of people of color. Accordingly, integration was necessary because it was the primary, perhaps only, way for all children to learn that the myth of white superiority and black inferiority was just that: a myth.

Given the inglorious history of white society's validation of the myth by dehumanizing people of color through such policies as apartheid and *de jure* segregation, maintaining *de facto* segregated schools means that the myth remains unchallenged in a meaningful way. In order for children to grow into equality-minded adults, they have a responsibility to respect and protect each other's human dignity. The required level of understanding necessary to achieve this goal is not gained only from learning democratic theory, but also by actively debunking the myth through daily interracial interactions. Schools are the logical and essential places to teach and learn this lesson.

The Law of Death and Dying

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The Law of Death and Dying combines three interrelated areas:

- 1) Elder law issues of Advance Health Care and Property Directives;
- 2) End-of-Life Issues at intersection of law, medicine and ethics; and
- 3) Wills and Trusts.

A. Advance health care and property directives

1. Powers of attorney (general, specific, durable, non-durable, springing), living wills, health care proxies.
2. Differences between living wills (individuals state health care wishes) and health care proxies (third person given authority).
3. Terri Schiavo case, who decides in absence of advance directives.
4. Organ donation: State law governs, Uniform Anatomical Gift Act. Federal National Organ Transplant Act created national computer registry of donated organs, prohibits purchase/sale.
5. Do not resuscitate order: tells medical professionals not to perform cardiopulmonary resuscitation. State enabling legislation.

B. End-of-Life Issues

1. Euthanasia
 - a. Passive euthanasia: generalized discontinuation of life support.
 - b. Active euthanasia: death actively inflicted through use of drugs or otherwise.
 - c. State legislation legalizing assisted suicide: Oregon and Washington Death with Dignity Acts.
 - d. Cases: *Gonzalez v. Oregon*, Supreme Court upheld Oregon law; Montana decision upholding right to doctor-assisted suicide; Jack Kevorkian case.
 - e. Select international comparison: Belgium and The Netherlands, assisted dying legal; Sweden, no law proscribing, prosecutors charge those who assist; Norway imposes criminal sanctions as "accessory to murder"; Finland, nothing in criminal code; Switzerland, assisted dying openly practiced; Australia, Euthanasia
2. Stem-cell research: laws covering legality, funding, patent ownership; international perspective.
3. Medical marijuana: California Act; 13 other states permit; recent **California** bill would allow adults to possess, grow and sell legally; *Gonzalez v. Raich*, Supreme Court case striking down California legislation.

C. Wills and Trusts

1. Differences between testate and intestate succession.
2. Protection of surviving spouses in different jurisdictions.
3. Testamentary, *inter-vivos*, insurance trusts.

Rebalancing Intellectual Property in the Information Society

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In today's Information Society, one of the most salient paradoxes is the fact that the law of Intellectual Property (IP) has been systematically used in ways that erect barriers around the very building blocks that lie at its foundation. As copyright law stretches to cover all kinds of information-intensive goods at an atomic level, access to raw data and educational materials is hindered, creative inputs shrink and scientific research becomes harder, costlier and, in some cases, virtually impossible.

The set of limitations and exceptions offered by IP laws around the world tends to be either too frail or too frailly implemented to combat copyright's organic malfunctions. The emergence of digital platforms and new forms of collaborative research and creation has not been matched by flexible, open-minded laws and regulations promoting innovation. This makes IP in general, and copyright in particular, one of the most poorly functioning areas in Law.

Recent literature has suggested that one way of mitigating some of these problems would be to resort to human rights law as a framework when interpreting IP norms. Although an increased dialectic relationship between these two fields seems desirable, the almost remedial quality of this proposal makes it very limited in scope. Also, as technology changes quickly and new forms of production of intangible goods remain elusive to predict, summoning human rights provisions as a corrective measure to IP's shortcomings might not be as illuminating as it has been in other legal areas. As a much-needed structural change in design of the law is unlikely to take place in the foreseeable future, we should redirect our attention to strengthening exceptions and limitations that have been proved to work and seeking to carve out new ones where needed.

U.S. Internal Immigration Enforcement: Not Exemplar but Alarm

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An examination of US immigration law, policy, and result might inform the European Union's own thoughts about regulating the movement of people across national lines.

Altering or ignoring immigration law seems integral to globalism. Markets for services, goods, labor and capital traverse political boundaries, many of them illegally. Receiving countries need labor at all skill levels, and there are rational incentives--lower labor costs or necessary expertise-- for employers or investors operating in the host country. The immigrants enjoy a significant wage increase if they secure jobs. The sending countries benefit from remittances sent home from migrants abroad. This combination and a fragile international economy induce law evasion. The US has 13 million undocumented entrants, and has been actively battling illegal immigration for almost a century, with mixed results. It should inform but not determine the EU's course.

An illegal population can be both vulnerable and dangerous.

Undocumented entrants have no identity that entitles them to basic human rights, legal protection, or welfare. Nor are they easily detected. National security requires controls on entry and exit. Social services and jobs may become scarce with a cheaper, poorer working population. Residents and workers without papers can be exploited. The relationships are complex, and both sending and receiving countries are approaching symbiosis.

US immigration adopts a law enforcement model, and the original border agency was enfolded in the larger and more prestigious Department of Homeland Security (DHS), created after terrorist bombings in New York City in 2001. Armed border guards patrol a 2000 mile southwest border, with about 500 miles of fence separating the US from Mexico, its largest sending country. The Border Patrol estimates that three people enter illegally for every one person detained by the agency. From 2006-2008, the DHS adopted a system whereby armed agents with confidential information systematically raided workplaces, public spaces, homes and schools looking for undocumented residents. Local law enforcement was deputized to detain immigrants stopped for unrelated police reasons, but who have no proof of legal presence. The US is considering a retraction of that policy, and ICE has ceased raids altogether. There is broad criticism of DHS' human rights record, and the undocumented population grows by 1.4 million a year. There are almost no integration efforts or agreements with sending nations.

It is impossible to measure if the US immigration enforcement regime has a deterrent effect. DHS apprehended 791,568 would-be entrants in 2008; 91% of those were made by the Border Patrol; and all but 3% were apprehended at the US's southwest border. The Immigration and Customs Enforcement, (ICE) which enforces

internal immigration law, arrested fewer than 10% of that number. In 2009, the US announced a new effort to enforce a 1986 law that made it a federal crime to hire undocumented workers. There were approximately 1100 criminal arrests made at workplaces; 135 were owners, managers, supervisors or human resources employees who faced charges of harboring or knowingly hiring illegal aliens. As of early 2010, only 10 percent of the arrests have led to convictions. A slightly larger percentage pled guilty. There are an estimated 7 million employers in the US.

EU Member States have cooperated on immigration issues since the Maastricht Treaty in 1992; but there have been significant changes in approach toward the goal of having every member state, at least in theory, adopt a common law. Regrouping from the more idealistic Tampere Pact, the Hague Plan created FRONTEX, a law-enforcement-type agency which helps EU countries with more porous borders and coordinates EU-wide immigration enforcement. At the end of last year, the EC gave FRONTEX more powers and the Stockholm Agreement identified immigration as a priority, and illegal immigration as an action item. Now facing similar problems, and creating comparable short-term solutions like a more robust border patrol, the EU should learn from and be warned by the US system.

Developing the Private Property Concept to Promote Sustainable Development

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The past decade bore witness to the transformation of South Africa's natural resources' law with the introduction of the concept of public trusteeship to South African jurisprudence. This concept was included in several pieces of legislation. The following Acts are examples of legislation incorporating the concept of public trusteeship into South African law: the National Water Act 36 of 1998, the National Environmental Management Act 107 of 1998, the Marine Living Resources Act 18 of 1998, the Mineral and Petroleum Resources Development Act 28 of 2002 and the National Environmental Management: Biodiversity Act 10 of 2004. With the promulgation of these statutes the state has been conferred with the obligation to act as either trustee or custodian of the environment or a specific natural resource, while the environment or that particular natural resource has been bequeathed to the people of South Africa.

The question explored in this paper is whether the concept of public trusteeship incites the development of private property to vest a public property interest in the applicable natural resource in the state? For the purpose of this paper the focus will fall on the concept as encapsulated in the Marine Living Resources Act 18 of 1998 and the Mineral and Petroleum Resources Development Act 28 of 2002. It needs to be determined whether these pieces of legislation vests a property interest in the state that goes beyond mere regulation. What needs to be determined is whether the concept of public trusteeship ignited the evolution of private property to public property to ensure the sustainable use of the country's natural resources.

Legitimacy of the Kosovo, South Ossetia and Abkhazia Secessions: Violations in Search of a Rule

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The Russia-Georgia conflict of August 2008 sparked another skirmish: whether Kosovo's independence served as a viable precedent for the legitimacy of the *prior* secessions of South Ossetia and Abkhazia. The more substantial question is this: When can a State's political subdivision legitimately claim Statehood?

There is no multilateral treaty on Secession. But there is a comparatively clear approach that can be developed from the practice of States and judicial pronouncements. These are the cornerstone for constructing a realistic dialogue about the legitimacy of future secessions. These three genies---Kosovo, South Ossetia, and Abkhazia---cannot be squeezed back into their prior geopolitical bottles.

None of these secessions are entitled to recognition under International Law. To develop support for this conclusion, one must appreciate the relevant political underpinnings of International Law. One would then wisely turn to what is *not* in dispute, and the associated "spin" that has engulfed both regional conflicts. One must focus primarily on the contemporary default rule that shuns secession, coupled with the extraordinary circumstances exception which Russia and the US claim to be applicable to these secessions.

The blueprint for this analysis would be constructed as follows: first, the three recognized paths to statehood; then the relevant international law paradigm for legitimate secession; how various players stack the (ethnic) deck; the use of non-peacekeeping "peacekeepers;" the evolution of secessionist modalities in these two regions; applying an international law yardstick to measure the legitimacy of these secessions; exploring extraordinary circumstances exception to the default rule "Thou shalt not secede," perhaps best exemplified by the Canadian Supreme Court in its (now theoretical) Quebec secession analysis; then closing with an assessment of how to achieve common ground regarding contemporary secessionist movements---to hopefully achieve common ground on the legitimacy of future secessions.

A Psychological and Policy Critique of EU Member Responses to the Green Paper on Mortgage Credit

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In 2005, the Commission of the European Communities issued a “Green Paper” on mortgage credit in the EU that sought input from EU members on a variety of proposed consumer protection measures. One of the proposed protections that the Commission sought input on was whether to require that consumers receive “advice” regarding the loans being offered to them and what “conditions” should be applied to any advice actually provided. In raising this possible consumer protection, the Commission stated that mortgages are complex, that advice on them tends to be sought more often than on most other financial services products, that adequate advice can play an important role in consumer confidence and in preventing over-indebtedness, but also noted that a compulsory advice provision would impact product pricing. Most of the EU members responded against requiring that consumers receive advice on their mortgage loans, emphasizing the costs of such advice and that some consumers would not desire such advice. Germany’s response further asserted that consumers do not need advice because consumers have the information they need to make informed decisions. As a result, in the 2007 “White Paper” on the Integration of EU Mortgage Credit Markets, the Commission no longer proposed that consumers be required to receive advice on the mortgage loan. This paper contends that many consumers do in fact need mortgage “advice” by an independent, qualified counselor due to numerous cognitive and social psychological barriers to consumers effectively using the loan information supplied to them to price shop for and obtain the lowest cost and most affordable home loan available to the consumer. After describing these psychological barriers, the paper addresses the conditions that should be applied to the mortgage counseling and concludes that under a cost/benefit policy analysis, the EU should adopt legislation mandating mortgage counseling to consumers.

Incorporating Legal Skills into Law Studies

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Recent studies on legal education recognize the importance of skills education. Legal skills have lasting power and value. They serve the student well both inside and outside of legal practice. The difficulty that law school programs face is in delivery of these skills. How should lawyer skills be taught? What is the most effective method or methods?

In answering these questions, this paper will compare, contrast and critique two different models. First, there is the “stand alone” skill course model, which is most common in North America. In this model specific skill courses are built into the curriculum and are taught by skill instructors. The skill courses are separate and distinct from the traditional law subjects. Skills are segregated from law. A strength is that they are taught by experienced skill teachers; a weakness is that they are often marginalized and regarded as second tier subjects. A second approach is the “integrated” model; where skills are taught within the existing traditional subjects. The skills become a part of the traditional course. This counters the marginalization of the skill, but there is a cost – the skills are often not taught in depth or by experienced instructors.

What is advocated for in this paper is a combined approach using both integration of skills in certain traditional courses to be augmented by stand alone skill courses, where the skills can be taught and developed in a more rigorous and comprehensive way.

A State of Rightlessness: The Egregious Case of North Korea

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This presentation analyzes the gross, systematic human rights violations committed by the rulership of North Korea and the prospect of trying leaders for their role in the mass atrocities through international, domestic and hybrid tribunals. First, the presentation would analyze the human rights violations themselves. Then, through an analytical framework grounded in theoretical discourse, the presentation would analyze the strengths and weaknesses of possible fora for trying the crimes perpetrated by the North Korean leadership.

North Korean leadership persists with subjecting those they deem to have committed political “crimes”, their families and friends to concentration camps, kidnapping of foreign nationals, and other overt violations of their international treaty commitments pertaining to human rights. It is anticipated, however, by this author and other scholars, that the end of the North Korean regime is an eventuality. As such, both Korean and international actors should prepare to formulate an appropriate means to vindicating the violated human rights well in advance. This scholarly presentation, based on research for a legal academic publication in the United States, seeks to make such a contribution.

International criminal tribunals in Nuremberg and Tokyo, concerning Rwanda and the former Yugoslavia, as well as hybrid tribunals in places such as Cambodia, Sierra Leone and East Timor, provide past and on-going precedents from which to draw insights applicable to North Korea. The consideration of what would best take place regarding North Korea could in turn add to the on-going colloquy regarding tribunals addressing atrocities around the world. It would aspire to help a movement to bolster human rights in the most populated continent in the world, possibly to construct a system of human rights for Asia akin to the regional systems for Europe, the Americas and Africa, yet with appropriate contextualization for Asia.

The Impact of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) on International Cultural Musical Exchange

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This paper considers the impact of the Convention on International Trade in Endangered Species on international cultural exchange. It proposes that the CITES signatory countries adopt an "Instrument Passport" which, upon presentation to customs authorities, would allow a musical instrument to cross international borders without the submission of the permits that the Convention currently requires.

CITES, embraced by the international community in 1973, restricts the transportation of species "threatened with extinction which are or may be affected by trade." To move one of the listed species across the border of one of the 194 signatory countries, one needs an export permit which will only be granted if "a Scientific Authority of the State of export has advised that such export will not be detrimental to the survival of that species" and the item "was not obtained in contravention of the laws of that State for the protection of fauna and flora." In addition, the person transporting the item must obtain an import permit from the country where she is taking the item. Finally, a re-importation permit is required to bring the instrument back home.

Most classical guitars and many other stringed instruments contain CITES-restricted species. To enter and leave any of the 194 CITES signatory countries, a musician must obtain import, export, and re-importation permits. Obtaining the permits may take several months. Any errors on the permits applications or accompanying declarations may result in permanent seizure of an instrument. In short, the cultural exchange catalyzed by a world musical tour is practically possible only by ignoring the governing international and hoping for haphazard customs enforcement.

The Use of Force during Arrest in South Africa: The Saga Continues

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In South Africa the use of force during arrest is statutorily governed by section 49 of the Criminal Procedure Act, 51 of 1977.¹ The inception of the Constitution² brought about a dramatic change in our law in this regard. During 2001 and 2002 the two highest courts³ in the country had to decide on the constitutionality of sections 49(1) and 49(2) respectively.⁴

The legislature had promulgated an amendment to section 49 as early as 1998 but the amendment only came into operation in 2003 after section 49 had undergone constitutional scrutiny. Legal Scholars and others raised serious objections against the amendment – some is even of the opinion that it creates a ‘right to flee’ and that the rights of perpetrators are protected at the detriment of law-abiding citizens.⁵

The Department of Justice and Constitutional Development has now once again drafted an amendment Bill⁶ which is being circulated for comments. This paper discusses the developments and changes in the law regarding the use of force during arrest in South Africa as well as the provisions of the draft Criminal Procedure Amendment Bill of 2010.

¹ Hereafter referred to as section 49.

² *Constitution of the Republic of South Africa, 1996.*

³ Supreme Court of Appeal and the Constitutional Court. The Supreme Court of Appeal (SCA) is the highest court in the country on all matters save constitutional matters. The Constitutional Court (CC) is the highest court in the country on Constitutional matters. It is important to note that before the inception of the Constitution South Africa had a system of parliamentary sovereignty where parliament could enact any legislation it deemed fit. Now all law must comply with the constitution and the validity of any act of parliament can be challenged on a constitutional basis. Entrenched in the Constitution is a Bill of Rights guaranteeing the fundamental rights and freedoms of individuals.

⁴ Section 49(1) in *Govender v Minister of Safety and Security* 2001 (2) SACR 197 (SCA) herein referred to as *Govender* and *S v Walters* 2002 (2) SACR 105 (CC) herein referred to as *Walters*.

⁵ See *inter alia* Snyman *Criminal Law* 5th Ed on 136.

⁶ The Criminal Procedure Amendment Bill, 2010.

**When College Students become the Main Culprits of Crime:
An Examination of the Copyright Issues
Associated with Music Piracy**

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Digital piracy, defined as the unauthorized copying of digital goods, software, digital documents, digital audio, digital video--for any reason other than backup without permission and compensation to the copyright holder, has increased dramatically in the past decade. For example, the International Federation of Phonographic Industries (IFPI) estimated that almost 40 billion songs were illegally downloaded in 2008, suggesting that approximately 95% of music tracks are downloaded without payment. Despite the increase of software and movie piracy, music piracy continues to have the greatest legal and scholarly emphasis placed upon it. In recent years, sales of CDs have plummeted and blame has been placed on the use of Peer-to-Peer (P2P) file sharing of songs. Furthermore, college students have been identified by researchers as the main perpetrators of digital/music piracy, because of their unique characteristics and living, social, and economic situation. Accordingly, much of the recent research on digital/music piracy has placed an emphasis on the usage of college students. The medium of P2P sharing is dramatically changing to avoid criminal prosecution. The purpose of this paper is to (1) present a legal analysis of the existing laws that govern downloading music and (2) provide the results of original research that involved surveying 131 college students from a Southern U.S. university. The results showed the majority of the students downloaded music illegally and were not fearful of criminal prosecution. The implications of this research corroborate the conflicting rulings from different courts concerning evolving the civil and criminal standards. There is a lack of knowledge and confusion among individuals, groups, corporations, and the legal system that has not kept pace with evolving technology. Conflicts in ruling in the United States as well as other countries and international organizations such as the WTO have created a "state of normlessness" on the macro and micro societal level. These implications of these findings along with the laws that govern music piracy are discussed.

The Gender Dimension of Migration and Social Entitlement within the EU

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This paper looks at the gender implications of the EU free movement of persons' provisions in order to examine whether EU law may advance or hinder the cause of women's rights.

The pursuit of gender equality in the European Union has failed to be an entirely transformative process because decision-makers have addressed the gender implications of EU law by focusing mainly on the development of measures which explicitly tackle gender inequality. Hence, the adoption and implementation of gender equality law thus far have deflected the direction of action from other developments which may have a more immediate material impact on women's lives and welfare. The free movement provisions illustrate this limitation to EU gender equality law: the progressive expansion in both the personal and material scope of migrants' rights and their families has been based upon a male experience of migration and, more broadly, upon a male breadwinning model of family structure. This argument is buttressed by the fact that care work is still not included in the notion of 'work' in EU law under the freedom of movement provisions showing that there is a gendered construction of citizenship.

It is this gendering of entitlement which is reflected in the regulation of paid work-family life reconciliation at EU level that forms the basis of analysis of this paper. The main finding of the paper is that the continuing tensions between paid and unpaid work reflect an uneven regulation of migration rights and have a negative impact on migrant women's financial autonomy and independent social entitlement.

A Moot Point? A Preliminary Examination of Extracurricular Mooting within the UK Legal Education System

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Mooting is a competitive exercise between students in the roles of two sets of counsel in front of a judge where, in the setting of an appellate court, the relative merits of a fictional legal case may be argued. At the conclusion of the legal argument one side will have been successful in persuading the ‘court’ as to the merits of their particular viewpoint. It is seen as essential to the putative advocate that he or she should have undertaken extensive participation in mooting before progressing from the academic to the professional stage of their legal education. Mooting has been a part of the UK legal educational framework for hundreds of years as a perceived necessity for legal advocacy. Many law schools include mooting within their curricula; however this paper will consider the extracurricular, and often voluntary, use of the moot in terms of advocacy training for students, whether the arguments put forward for mooting within legal education literature are valid and whether it is time for a re-evaluation of the reasons for student moots within university law schools.

Human Rights and Humanity in the Holylands

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The paper focuses on the environmental problems resulting from the 'studentification' of residential areas neighbouring universities in the UK by presenting a case study of 'the Holylands'- a traditional, integrated Belfast community comprising a network of streets built in the 1890s located next to the Queen's University.

From 1997 onwards the Labour government's declared policy of raising the number of school leavers in higher education to 50% was pursued without provision of funding for designated student accommodation to meet the continually increasing demand.

Consequently, the gap was filled by the unregulated market and private property developers. Traditional two-up two-down terraced houses in 'the Holylands' were extended to become Houses in Multiple Occupancy (HMOs) resulting in a dramatic increase in population density and the destruction of the social fabric and cohesion of the settled community. The out-migration of long-term residents mirrored the rising, transient student population and concomitant environmental problems: noise pollution, anti-social behaviour, vandalism and waste.

Within the context of "the Troubles"- from 1973 direct rule provisions to the 1998 Belfast Agreement devolving power back to the Northern Ireland Assembly – aspects of the planning process and legislative framework are reviewed focusing on the extent to which indicators of a quality human environment and environmental problems are taken into consideration. Compliance and compatibility with the Human Rights Act is assessed.

A remedy for residents is sought among the principles and positive obligations established in Article 8 case law of the European Convention guaranteeing protection for the right to respect for home, private and family life including health and well-being. The paper concludes with recommendations to redress the flaws and gaps in the regulatory framework, to overcome the democratic deficit - with third party rights of appeal in planning - and rectify non-adherence to the rule of law.

Paternity Presumptions in Louisiana

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In 2005, Louisiana amended its Civil Code articles on paternity to give a presumption of paternity to a first husband under circumstances that suggest the child is more likely the child of the second marriage. If a woman terminates a marriage, then contracts another within three hundred days after the termination of the first, the child born during the second marriage is presumed to be a child of the first marriage.

The articles place a burden on the first husband to file a disavowal action within one year after he learns or should have learned of the birth of the child although he may be unfamiliar with the exact date of birth or of the circumstances of the conception of the child, and unaware that the law limits his right to disavow the child. This disavowal action will often be brought only after the first husband is asked to contribute to the support of the child or after the death of the first husband when the child comes to inherit from his estate.

Indeed, because divorce so often follows actual physical separation by a substantial period of time, it is likely that the divorce and second marriage under these circumstances was motivated by the pregnancy which resulted from a liaison with the second husband. Reason would suggest that the second husband, in the home with the newborn and the child's mother, should be the presumed father.

An examination of these articles raises a question of what presumptions a state should impose to best protect a child and the family of which he or she is a part when the child's mother has married more than once and a question of paternity exists. My paper will examine a range of possible presumptions and suggest one appropriate to address this issue.

Australian Tax Law: Attitudes to tax Avoidance Issues in Australia over the Last 30 Years

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Worldwide, governments and their taxation authorities have long been aware of measures undertaken by its citizens to effectively minimise the amount of tax payable by them.¹ This paper discusses how taxpayers in Australia were able to take advantage of major structural legislative loopholes in existing tax legislation in the late 1970's through to the 1980's, which allowed them to engage in various tax evasion schemes, costing the Australian economy many millions of dollars in tax leakages.² The Australian Government responded by introducing various legislative provisions expanding the powers of the Australian Tax Office³ and its officials. In 1975, the Australian Government conducted its first review, The 'Asprey Review'⁴, which laid the foundations for further reforms and established the three principals of tax policy reform: fairness, efficiency and simplicity. The 1980's saw the introduction of major legislative amendments designed to ameliorate the economic and social effects of the tax evasion attitudes of the 1970's and 80's. Part IVA of the *Income Tax Assessment Act 1936* was introduced in 1981 and was designed to deal with the 'blatant, artificial or contrived' tax avoidance schemes.⁵ The Australian Governments move from a 'command and control' framework that typified the 1970's and 1980's to one of 'responsive regulation' and 'meta risk management' in the 1990's onwards⁶ has arguably facilitated a shift in Australian taxpayer's attitude towards compliance. This paper contends that Australian taxpayers, in meeting their tax obligations, are no longer motivated by entirely their own economic welfare⁷ and that a perception of fairness and trust in the regulating body has today a much greater influence on a their choice to actually contravene tax rules.

¹ I Potas, 'Thinking About Tax avoidance (No 43)', Australian Institute of Criminology: Trends and Issues in Crime and Criminal Justice, Canberra, 1993, 1. Also refer to *Commsrs of Customs & Excise v Top Ten Promotions Ltd.* [1969] 3 All ER 39 at 69 per Diplock L.J. "there are few greater stimuli to human ingenuity than the prospect of avoiding fiscal liability".

² P. Browne, 'Fair Shares', *Legal Services Bulletin*, no 52, 1985, Browne postulates that 'the amount of tax revenue being lost annually from avoidance schemes was variously estimated to be anything from \$3,000M to over \$10,000M (AUD). The 1986-1987 Annual Report of the ATO also stated that the avoidance schemes of the late 1970's to mid 1980's involved some 6,688 companies and resulted in tax evasion of between \$500m and 1000M. See A Freiberg, 'Ripples from the bottom of the harbour: some social ramification of tax fraud', *Criminal Law Journal* vol 12, 169.

³ The Australian Tax Office is the Commonwealth Government's main revenue collector, and the statutory authority responsible for the administration of Australia's taxation system.

⁴ Asprey K (Chairman), Lloyd, J, Parsons, R and Wood, K 1975, *Taxation Review Committee, Full Report*, Australian Government Publishing Service, Canberra.

⁵ J Cassidy, *Concise Income Tax*, 4th Ed, The Federation Press, Sydney, 2007, 80. Support for the application of Part IVA measures is further found in *Tax Laws Amendment (2006 Measures No 1) Act 2006* (Cth), which in effect deters the promotion of tax avoidance and evasion schemes via tax havens and off shore financial centres.

⁶ J Braithwaite, 'Penalties of White Collar Crime', *Complex Commercial Fraud*, Conference Proceedings No. 10, ed P Grabosky, Australian Institute of Criminology, Canberra, 1992, 164.

⁷ One theory which attempts to explain the compliance behaviour of people concerning their tax obligations is the rational choice model, which propounds that people are motivated entirely by economic welfare, assessing all associated risk and opportunities and disobeying the law when they anticipate the probability (an monetary fine) of being caught are lower than the economic gain that would result from non compliance. See Kristina Murphy, 'The role of trust in Nurturing Compliance: A study of Accused Tax Avoiders' (2004) 28 *Law and Human Behaviour*, 188.