

2015

Law Abstracts
12th Annual International
Conference on Law
13-16 July 2015, Athens,
Greece

Edited by Gregory T.
Papanikos

THE ATHENS INSTITUTE FOR EDUCATION AND RESEARCH



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Preface

This abstract book includes all the abstracts of the papers presented at the *12th Annual International Conference on Law, 13-16 July 2015, Athens, Greece*, organized by the Athens Institute for Education and Research. In total there were 47 papers and 49 presenters, coming from 15 different countries (Australia, Brazil, Canada, Colombia, Germany, India, Iran, Malaysia, Romania, Russia, South Africa, Spain, Switzerland, UK and USA). The conference was organized into nine sessions that included many different areas of Law. 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 and/or journals of ATINER.

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

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

Gregory T. Papanikos
President

FINAL CONFERENCE PROGRAM
12th Annual International Conference on Law, 13-16 July 2015,
Athens, Greece

Conference Venue: Titania Hotel, 52 Panepistimiou Avenue, Athens,
Greece

Organization and Scientific Committee

1. Dr. Gregory T. Papanikos, President, ATINER & Honorary Professor, University of Stirling, UK.
2. Dr. George Poulos, Vice-President of Research, ATINER & Emeritus Professor, University of South Africa, South Africa.
3. Dr. David A. Frenkel, LL.D., Head, Law Research Unit, ATINER, Emeritus Professor, Guilford Glazer Faculty of Business and Management, Ben-Gurion University of the Negev, Beer-Sheva, and School of Law, Carmel Academic Centre, Haifa, Israel.
4. Dr. Michael P. Malloy, Director, Business and Law Research Division, ATINER & Distinguished Professor & Scholar, University of the Pacific, USA.
5. Dr. Panagiotis Petratos, Vice President of ICT, ATINER, Fellow, Institution of Engineering and Technology & Professor, Department of Computer Information Systems, California State University, Stanislaus, USA.
6. Dr. Nicholas Pappas, Vice-President of Academics, ATINER, Greece & Professor, Sam Houston University, USA.
7. Dr. Chris Sakellariou, Vice President of Financial Affairs, ATINER, Greece & Associate Professor, Nanyang Technological University, Singapore.
8. Ms. Olga Gkounta, Researcher, ATINER.

Administration

Stavroula Kyritsi, Konstantinos Manolidis, Katerina Maraki & Kostas Spiropoulos

Monday 13 July 2015

(all sessions include 10 minutes break)

08:00-09:10 Registration and Refreshments

09:10-09:30 (ROOM C) Welcome & Opening Remarks

- Dr. Gregory T. Papanikos, President, ATINER & Honorary Professor, University of Stirling, UK.
- Dr. David A. Frenkel, LL.D., Head, Law Research Unit, ATINER, Emeritus Professor, Guilford Glazer Faculty of Business and Management, Ben-Gurion University of the Negev, Beer-Sheva, and School of Law, Carmel Academic Centre, Haifa, Israel.
- Dr. Michael P. Malloy, Director, Business and Law Research Division, ATINER & Distinguished Professor & Scholar, University of the Pacific, USA.

09:30-11:00 Session I (ROOM C)

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

1. *Ronald C. Griffin, Professor, Florida A&M University, USA. Domestic Surveillance.
2. Tim Bakken, Professor, U.S. Military Academy at West Point, USA. Discovering Innocence in Adversarial and Inquisitorial Legal Systems.
3. David Papke, Professor, Marquette University Law School, USA. Postmodern Decline? Belief in the Rule of Law as a Tenet of American Ideology.
4. Glenys Williams, Reader in Law, Aberystwyth University, U.K. The Demise of Necessity; the Rise of Duress of Circumstances.

11:00-13:00 Session II (ROOM C)

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

1. *Dwarakanath Sripathi, Professor, Osmania University, India. Live in Relationship - Vanishing Point of Institution of Marriage.
2. Rita-Marie Jansen, Associate Professor, University of the Free State, South Africa. Medico-Legal Implications of ROP (Retinopathy of Prematurity) in South Africa.
3. Mariette Brennan, Assistant Professor, Lakehead University, Canada. Saying No to Chemotherapy: An Examination of the Aboriginal Right to Traditional Medicine.
4. Brand Claassen, Senior Lecturer, University of the Free State, South Africa. The Viability of 'Wrongful Life' Claims in South African Law.
5. Lisa Mountford, Senior Lecturer, Staffordshire University, U.K. Gender Adjustment in English Criminal Law: Is the Female Voice Really Being Heard? (Legal Education)
6. Whitney Rosenberg, Lecturer and LL.D student, University of Johannesburg, South Africa. The Illegality of Baby Safes as a Hindrance to Women who want to Relinquish Their Parental Rights.

13:00-14:00 Lunch

14:00-15:30 Session III (ROOM C)**Chair:** *Dwarakanath Sripathi, Professor, Osmania University, India.

1. Javier Rodriguez Olmos, Associate Professor, Chair of Property Law, Ph.D. Candidate, Externado University of Colombia, Colombia. Fundamental Rights and Property Law in Colombia: From (private) Property as Constitutional Right to the Limitations of Property to grant Constitutional Rights.
2. *Martin Brenncke, Lecturer, University of Zurich, Switzerland. Europeanisation of Methodology of the EU Legal Duty to Interpret National Legislation in Conformity with EU Directives.
3. Debora Ribeiro Sa Freire, Researcher, University Center of Barra Mansa, Brazil. Compliance: Will Accuracies the Liability Administrator?
4. Catrinel Brumar, Postdoctoral Researcher, National School for Political and Administrative Sciences - Bucharest, Romania. The Dublin III Regulation - Another Failed Attempt to Regulate Between Solidarity and Responsibility?
5. Thomas Hickie, Visiting Fellow and Sessional Lecturer, University of New South Wales, Australia & Ian Lloyd, Adjunct Professor, University of Newcastle, Australia. Commissions Fighting Corruption or Star Chambers? Some Issues Arising from the NSW ICAC Investigation into Margaret Cunneen.
6. *Anna Chronopoulou, Lecturer, European College of Law, England. A Renegotiation of Status? Neo-tribal Socialities in the Barristers' Profession in England.

15:30-17:30 Session IV (ROOM C):**Chair:** *Martin Brenncke, Lecturer, University of Zurich, Switzerland.

1. Mihaela Tofan, Associate Professor, University Alexandru Ioan Cuza, Romania. The Legal Framework for Mobility of Human Resources within EU. A Romanian Fiscal Liability Approach.
2. *Lavinia-Olivia Iancu, Lecturer, Tibiscus University Timisoara, Romania. Sanctions for the Fraudulent Directors in the Insolvency Procedure of Romania.
3. Kleoniki Pouikli, Ph.D. Candidate, University of Heidelberg, Germany. The Role of the Environmental Principles in the Effective Protection of the Environment: the Case of the "Polluter Pays Principle".
4. Gabriela Soldano Garcez, Lawyer, Journalist & Ph.D. Student, The Catholic University of Santos - UNISANTOS, Brazil. The Access to Information in MERCOSUR for Sustainable Development.
5. Loyiso Makapela, Lecturer, University of the Free State, South Africa. Soft Law Mechanisms as Instruments of Regulation for Multinational Enterprises: The UN Guiding Principles and the Evolution of the Business and Human Rights Discourse.

17:30-19:30 Session V (ROOM C)**Chair:** *Elfriede Sangkuhl, Senior Lecturer, University of Western Sydney, Australia.

1. Sara Anne Hook, Professor and Program Director, Informatics Core, Indiana University, USA & Cori Faklaris, M.S. Student, Indiana University, USA. The State of E-Discovery as Social Media Goes Global.
2. Ffion Llewelyn, Lecturer, Aberystwyth University, U.K. Household and Self-defence: why Permit Disproportionate Force in Criminal Law?
3. Allison Jade Nicole Geduld, Lecturer, North-West University, South Africa. *uBuntu* as a Constitutional Value in South Africa: Is Human Dignity Not Enough?
4. Itumeleng Lephale, Research Assistant, University of South Africa, South Africa. The Extent of the Scope of Punishment.
5. Helga Haflidadottir, Ph.D. Candidate, University of St. Andrews, U.K. International Enforcement: A Case for Progressive Development.

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

Tuesday 14 July 2015

08:00-10:00 Session VI (ROOM C)

Chair: *Lavinia-Olivia Iancu, Lecturer, Tibiscus University Timisoara, Romania.

1. Kenneth Lewis, Professor, Nova Southeastern University, USA. The Namibian Holocaust: History Repeated and the Consequences Thereof.
2. Kamal Ahmad Khan, Senior Lecturer, University of Lucknow, India. The Protection of Minorities - Whether a Neglected Field?
3. *Jorge Emilio Nunez, Lecturer, Manchester Metropolitan University, U.K. Sovereignty Conflicts and the Desirability of a Peaceful Solution: Why Current International Remedies are not the Solution.
4. Sofia Cavandoli, Lecturer, Aberystwyth University, U.K. The Unresolved Dilemma of Self-Determination: Crimea, Donetsk and Luhansk.
5. Rene Koraan, Lecturer, North-West University, South Africa. The Coming of Age of Juvenile Justice in South Africa: 21 Years into Democracy.

10:00-12:00 Session VII (ROOM C)

Chair: *Jorge Emilio Nunez, Lecturer, Manchester Metropolitan University, U.K.

1. *Michael Malloy, Distinguished Professor and Scholar, University of the Pacific, USA. Risk Management in Financial Services.
2. *Claudia Ribeiro Pereira Nunes, Professor and Researcher, University Center of Barra Mansa, Brazil & Maria Leticia de Alencar Machado, Lawyer, University Center of Barra Mansa, Brazil. Territoriality or Universalist Doctrine of Transnational Insolvency: Case Study.
3. Vicenc Ribas Ferrer, Visiting Professor, University of Alcala, Spain. Corporate Governance in the European Listed Companies and Financial Institutions.
4. *Elfriede Sangkuhl, Senior Lecturer, University of Western Sydney, Australia. The Dilemma of Taxation.
5. *Angayar Kanni Ramaiah, Senior Lecturer, University Technology Mara, Malaysia. Fair Competition Law and Policy in the Rise of Asian Economic Community (AEC) on SMEs in ASEAN: Some Critical Observations and Recommendation.

12:00-13:30 Session VIII (ROOM C)

Chair: *Angayar Kanni Ramaiah, Senior Lecturer, University Technology Mara, Malaysia.

1. *Michael Blissenden, Professor and Acting Deputy Dean, University of Western Sydney, Australia. A Storytelling Learning Model for Legal Education - The Way Forward.
2. Andrea Versuti, Professor, Universidade Federal de Goias, Brazil & Marco Aurelio Rodrigues da Cunha e Cruz, Professor, Universidade Federal de Goias, Brazil. Creative Commons Licenses for Transmedia Storytelling Content.
3. *Irina Sakharova, Associate Professor, Don State Technical University, Russia. Legal Frameworks for Leasing in Comparative and International Perspectives.
4. *Alani Golanski, Director, Appellate Litigation Unit, Weitz & Luxenberg, P.C., USA. Why there is Widespread Nonmoral Theoretical Disagreement in Law.
5. Ahmadreza Yalameha, Professor, Islamic Azad University, Dehaghan Branch, Iran. Reflection of Judicial Contents and Concepts in Rumi's Masnavi.
6. Ali Dehghan, Associate Professor, Islamic Azad University, Dehaghan Branch, Iran. Survey on the Social Preventions in Golestan and Boostan of Saadi.

13:30-14:30 Lunch

14:30-16:00 Session IX (ROOM C)

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

1. Stephen Legomsky, Professor, Washington University School of Law, USA. The U.S. Immigration Debate and the Limits of Executive Power.
2. Adoracion Perez Troya, Professor, University of Alcala, Spain. Improving Gender Balance among Directors of Companies. A Proposal of a European Directive and Recent Advances in Europe.
3. John Tehranian, Professor, Southwestern Law School, USA. The New (C)ensorship.
4. Dane Ally, Associate Professor, Tshwane University of Technology, South Africa. Enhancing the Democratic Value of Governmental Accountability through Socio-Economic Rights Litigation in South Africa.
5. Myrone Stoffels, Junior Lecturer, North-West University, South Africa. The Separation of Powers in South Africa.

17:30-20:00 Urban Walk (Details during registration)

20:30- 22:00 Dinner (Details during registration)

Wednesday 15 July 2015
Cruise: (Details during registration)

Thursday 16 July 2015
Delphi Visit: (Details during registration)

Kamal Ahmad Khan

Senior Lecturer, University of Lucknow, India

The Protection of Minorities – Whether a Neglected Field?

Minorities are existing socio cultural realities. Over the years minority problems have led to intervention, aggression and major conflicts between nation states. The 1988 annual review of Uppsala University Institute of Peace and Conflict Research shows that the world's 111 major armed conflicts, almost two thirds involved conflicts between majorities and minorities. This is corroborated by UNHCR in its analysis of the country of origin of refugees and reflection on the roots causes of the two million Palestinian refugees.

The relation between dominant and non dominant cultural, religious and linguistic groups within a political system has been a perennial problem of politics since time immemorial. In the past it was symbolized by the conflict between dominant and non dominant religious groups, instances of which can be seen in the persecution of Jews in Pharoaic Egypt, Christians in early Roman Empire, Jews and heretical sects in medieval Christendom. It was hoped that the problem will get resolved with the separation of Church and State. The rise of secularism was however associated with the rise of nationalism which further aggravated this problem by advocating the concept that the political boundaries should conform to the national characteristics of the people . Most of the States although constituting of different religions, linguistic and cultural groups regard themselves as a power instrument of the dominant group. States tried to mould the people belonging to minorities in accordance with the religious, linguistic and cultural traits of majority through education, propaganda, political and legal action.

The movements launched to assimilate the minority groups have led to the demands of Germanization, Americanization, Italianization and Indianization. Where the minority groups have resisted this policy, states have also resorted to extermination and expulsion of the minorities to assure national uniformity. The extermination of six million members of Jewish and other minorities in Germany, expulsion of millions of Germans from Poland and Czechoslovakia, partition of the Indian sub-continent and subsequent displacement of large number of people as a result of it., and the genocide in Rwanda, Bosnia and Iraq are some of the policy of deportation and annihilation.

As the protection of minority is the hallmark of a civilized nation, the problems of minorities have attracted both national and international attention. Both national and international institutions have taken different efforts to protect the minorities to keep the dictum of 'Unity

Among Diversity' alive. But it is undesirable fact that among all the efforts to codify the international protection of human rights and basic freedoms, one problem has so far been rather neglected: the protection of ethnic and linguistic minorities. There are certain areas which have been neglected either knowingly or unknowingly. This area may be summarized as issues of language, education, equality, positive or negative rights, loyalty and the issues of definition of the term minorities. The contradictory provisions of different international instruments have also created confusion resulting ineffective implementation of minority rights and their protection. Making provisions for protection of minorities is not sufficient. A good provision may be a bad provision, if the persons working behind it are of a bad lot, a bad provision may be a good provision if the persons working behind it are of a good lot. So it is the will of the State and mind set of the implementing authorities which may play an important role in reducing fear of discrimination and insecurity from the minds of minorities.

However, in this background the purpose of this paper is deal with different aspects of the concept of the term minorities and to evaluate and analyze both the national and international instruments to protect the minorities. Some suggestions are also given to meet the problem effectively.

Dane Ally

Associate Professor, Tshwane University of Technology, South Africa

Enhancing the Democratic Value of Governmental Accountability through Socio-Economic Rights Litigation in South Africa

South Africans have recently witnessed extremely violent public protests relating to a lack of governmental service delivery. It is assumed that the reasons for such demonstrations are numerous. Whether these protests are justifiable, depends on the view one holds regarding the justiciability of the constitutionally entrenched socio-economic rights. These rights are, for example, the right to have access to adequate housing, water and sanitation, the right to have access to adequate health care services, the right to have access to basic education, and social security rights. On the one hand, citizens might be of the view that having waited fifteen years since democracy for the realisation of these constitutional promises is much too long. For that reason, some might link these protests to a general misconception of the scope and content of these constitutional guarantees, thus arguing that such protests were based on an erroneous belief that these rights are realisable with immediate effect. On the other hand, it is common knowledge that in any democratic society, governments are held accountable to its citizens by way of elections. What about the period between elections? For this reason, others might argue that the right to publicly protest – especially between elections – serves to achieve two important purposes: firstly, it is a democratic means of obtaining official governmental responses for its policy decisions, and secondly, it is aimed at prompting the reconsideration of such policies. In the light hereof, this paper analyses a judgment recently handed down by the Constitutional Court of South Africa in *Mazibuko v City of Johannesburg*, which suggests that socio-economic rights litigation should serve to achieve an equivalent goal, which is, holding government accountable over specific issues of public policy.

Tim Bakken

Professor, U.S. Military Academy at West Point, USA

Discovering Innocence in Adversarial and Inquisitorial Legal Systems

This paper discusses the development of a better system to prevent innocent people from suffering conviction. For the first time in history because of DNA testing, we can estimate the number of innocent people who are convicted and imprisoned. However, whether in the adversarial or inquisitorial legal systems, once an innocent person has been charged with a crime, despite the presumption of innocence, the only real hope of acquittal is for the innocent person independently to discover exonerating facts for which no one else is searching. This can be impossible for someone who is indigent or in jail awaiting trial. Thus, defendants should have the right to “plead innocent” and thereby require the prosecution to search for facts identified by the defendant. In return, the defendant would have to cooperate in the investigation, such as consenting to an interview. If, after this investigation, the prosecution proceeded to trial, the defendant would be entitled to additional presumptions of innocence at trial, such as a standard of conviction that is higher than beyond a reasonable doubt. This paper describes this new procedure and details how it could be implemented in adversarial and inquisitorial legal systems.

Michael Blissenden

Professor and Acting Deputy Dean, University of Western Sydney,
Australia

**A Storytelling Learning Model for Legal Education -
The Way Forward**

Since 2007 I have utilised a learning methodology centred on the notion of storytelling in my law teaching. This has been published in a number of referred journals (Blissenden 2007 and 2010). This methodology originally focussed on students analysing a key reported judicial case from the perspective of a story. This was then used to inform themselves and the rest of the class as to the principle arising from the judicial decision. This principle was then applied to a new factual situation to determine how the law would apply. This approach has been identified, applied and developed in a number of common law jurisdictions such as the UK and the US. It has now been identified and adapted in a European context (Italy and Spain). The result is an adaptable methodology to a number of different situations to teach law (2013 and 2014).

This paper will examine and report on the development and adaption of the storytelling methodology to common and continental law based systems since 2007. A reflective approach will be taken and suggestions made for how the methodology can be further enhanced and applied to the teaching of law.

Mariette Brennan

Assistant Professor, Lakehead University, Canada

Saying No to Chemotherapy: An Examination of the Aboriginal Right to Traditional Medicine

In 2014, two eleven years old Aboriginal girls from Ontario were diagnosed with acute lymphoblastic leukemia; following prompt medical diagnoses both girls were given significant odds of survival (one had a 70-75% chance of survival; the other (whose leukemia had different gene markers) had almost a 95% chance of survival). The only caveat to these odds was that both girls had to complete the prescribed medical treatment which included several rounds of debilitating chemotherapy treatment. Despite these incredible odds, neither girl completed the medical treatment. The parents of both girls requested that doctor's stop chemotherapy treatment and requested that their child be discharged from hospital care. Both girls stopped chemotherapy to pursue traditional aboriginal medical treatment. By January of 2015, one of the girls succumbed to the cancer and a landmark court decision has concluded that the surviving girl has a constitutional right to forego chemotherapy treatment and continue to only receive traditional aboriginal medicine.

This paper will begin with an overview of the case: it will examine the legislative framework under which the decision is made, how and when courts may intervene and force a child into medical treatment and why the finding of an aboriginal right to medical treatment was a determining factor in this case. Despite the significance of stating the mother had a right to stop her child's chemotherapy treatment to pursue a constitutional right to traditional aboriginal medicine, the judge failed to discuss the content of such a right. This paper will seek to establish the content of an aboriginal right to medical treatment. It will rely on Canadian jurisprudence that has identified the content of other aboriginal rights (ie hunting and fishing) to set up the legal parameters. The paper will also examined international norms, including the Declaration on the Rights of Indigenous persons, to elucidate the content of such a significant right. The paper will conclude with a brief discussion of the implications that may arise from the case.

Martin Brenncke

Lecturer, University of Zurich, Switzerland

Europeanisation of Methodology of the EU Legal Duty to Interpret National Legislation in Conformity with EU Directives

The increasing influence of European Union law on national legal methods has been an ongoing issue in research and practice. The question regarding whether and to what extent the EU legal duty of conforming interpretation modifies national legal methods is in the front line of discussions. Case law of national courts is regularly preoccupied with this question.

The EU legal duty of conforming interpretation requires national courts to interpret national legislation, as far as possible, in the light of the wording and the purpose of an applicable EU directive in order to achieve the result sought by the directive. Prevailing German and English legal doctrine hold the view that a national judge is required to interpret national legislation within the scope of an EU directive solely according to national legal methods. However, it can be observed that the Court of Justice of the European Union (CJEU) intervenes in the methodology of conforming interpretation. In doing so, it behaves in an ambiguous manner. On the one hand, the CJEU refers to national legal methods. On the other hand, it has set up autonomous European methodological rules, which national courts have to observe. This paper attempts to resolve this contradiction.

It first shows why the uniform effectiveness of EU directives is at risk if the methods of conforming interpretation are solely determined by national rules. Then, it considers a common European methodology for conforming interpretation of harmonised national legislation as a possible solution of this dilemma, but rejects it due to a lack of competence of the EU. Subsequently, it argues that the CJEU has developed its own European methodological rules. The paper also shows how highest courts in England and Germany explicitly or implicitly accept this CJEU case law. Therefore, it is necessary to establish the relationship between the European methodological rules and national legal methods. From this, it is possible to classify the EU legal duty of conforming interpretation as a hybrid instrument which provides an example of European legal pluralism. Finally, the paper presents an outlook on the future of the European methodological rules and determines the relationship between these rules and concerns raised by constitutional courts in some Member States regarding the limits of a further Europeanisation through judicial law-making by the CJEU.

Catrinel Brumar

Postdoctoral Researcher, National School for Political and
Administrative Sciences - Bucharest, Romania

The Dublin III Regulation – Another Failed Attempt to Regulate Between Solidarity and Responsibility?

The recent tragic events in the Mediterranean emphasized the need for a strengthened reaction to lost of lives at sea when dealing with the migration and asylum phenomenon. But it also revealed, as the European Council held on the 23rd of April 2015 confirmed, the need for a reinforcement of the internal solidarity and responsibility in the full implementation of the Common European Asylum System. The Dublin mechanism for determining the European Union Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national is one of the key components of this Common System and as such, is central in attributing responsibility among Member States. However, the criteria it used in this attribution of responsibility made the Member States occupying the external borders of the Union carry the major part of the burden of being the gates to Europe.

The Dublin mechanism recently underwent amendments; the Dublin III regulation's adoption was marked by the case-law of the European Court of Justice, and of the European Court of Human Rights, both indicating that the former legislation's philosophy, attributing the main responsibility in evaluating the application to the Member State of first arrival on the EU territories, was in need of fundamental reshape.

Nevertheless, Dublin III only consolidates this idea, allowing for exception only in preserving the family unity. In doing so, it comforts the practice already embraced by Member States of a low rate of recourse to other criteria than the responsibility for entering the EU territory, stubbornly relying on a false-proven presumption that all Member States apply the same standards of treatment of applicants, in spite of clear conclusions to the contrary reached by the European Courts. The only new provision translating into legal terms the cry for help of States succumbed in managing the flow of applications is the mechanism permitting a Member State to ask for the temporary suspension of transfers of applicants identified to fall under its responsibility.

As the former legislation was considered a challenge for EU solidarity in an atmosphere of automatic mutual trust between Members, Dublin III was expected to contribute more substantially to achieving genuine distribution of responsibility. Given the minimum changes brought by Dublin III, national implementation, shaped by the

human rights instruments, becomes pivotal in ensuring their respect and burden sharing, through flexible recourse to hierarchised criteria. In the absence of an adequate domestic response, tragic events like those in the Mediterranean will point to Dublin mechanism as being at “the heart of the catastrophe” rather than the pillar of the Common Asylum System that the European Union needs.

Sofia Cavandoli

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The Unresolved Dilemma of Self-Determination: Crimea, Donetsk and Luhansk

The concept of self-determination has been the subject of much scrutiny in international law. In simple terms, self-determination denotes the legal right of a people to decide their own destiny in the international order. The question of how this takes place in practice has never been universally agreed upon at the international level. Uncertainty surrounding the concept's interpretation and application in international law has raised serious questions in a number of situations where the right to self-determination has been invoked in recent years. Referendums in the Crimea, Donetsk and Luhansk in March and May 2014 are the latest instances where self-determination has been controversially proclaimed. The following paper will look at how events unfolded in the Crimea and the Ukraine's eastern regions in more detail and it will then demonstrate how "the unresolved dilemma of self-determination" has contributed to a violation of the Ukraine's sovereignty and constitution, as well as international law in both instances.

Anna Chronopoulou
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**A Renegotiation of Status?
Neo-tribal Socialities in the Barristers' Profession in
England**

This paper examines the ways in which the Maffesolian theory of neo-tribal sociality challenges the main characteristics of legal professional identity at the English Bar. It proposes that legal professional identity is challenged on the grounds of rationality and control. It also raises a number of questions in regards to the notion of status upon which legal professional identity has been constructed. This paper suggests that the use of the notion of neo-tribal sociality in the study of the English Bar resurfaces hidden aspects of legal professional identity. From this perspective, this paper reveals aspects of a new kind of legal professional identity at the English Bar suggestive of elements of neo-tribalism.

These claims are supported by a thorough examination of a small sample of advertising material of some sets of Chambers in England.

Brand Claassen

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The Viability of 'Wrongful Life' Claims in South African Law

An action based on wrongful life is instituted by or on behalf of an impaired child against a medical practitioner or other genetic consultant. It is averred that the defendant negligently failed to determine, before the plaintiff's birth, the genetic defect which caused his impairment and as a result of which his parents were deprived of the opportunity to prevent his birth. The child thus in effect claims that his life in a defective condition is worse than no life at all, and seeks to be compensated for his injury, which he claims, is his life as such.

In the past an action of this kind was rejected by South African courts, essentially because they were not willing to evaluate the existence of the child against his non-existence and find that the latter was preferable. It was said that this question went so deeply to the heart of what it is to be human that it should not even be asked of the law.

The Constitutional Court of South Africa however recently opened the door to 'wrongful life' claims when it granted leave to appeal a High Court dismissal on the grounds that there was no provision for such claims in South African law. Even though it was decided by the Constitutional Court that a child's claim in this context may in principle potentially exist, such a finding involved complex factual and legal considerations which the Constitutional court felt it was not best placed to evaluate in the given circumstances. The matter was therefore referred back to the Western Cape High Court for a final decision.

In anticipation of the possibility that this kind of claim might be allowed in South Africa in the near future, the development of the country's common law in accordance with the values enshrined in its constitution in order to accommodate such an expansion will be investigated. The legal position in a number of foreign jurisdictions will also be considered in the process.

Allison Jade Nicole Geduld
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***uBuntu* as a Constitutional Value in South Africa:
Is Human Dignity Not Enough?**

Since the new constitutional dispensation the South African legal system has been based on a new system of constitutional values. Some of the most prominent values set out in the *Constitution of the Republic of South Africa, 1996* are human dignity, equality and freedom. In the epilogue of the interim constitution of South Africa (1993) it was stated that the South African society had a need for *ubuntu* and not for victimisation. *uBuntu* was not explicitly mentioned as a constitutional value in the final Constitution of South Africa. However, it was subsequently used by courts in later judgments.

It has often been said that it is impossible to define *ubuntu*. The term has however been used to describe a sense of interconnectedness between human beings. In the first case of the constitutional court *S v Makwanyane* *ubuntu* was described as “group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity. It has also been described in *S v Makwanyane* as respecting human dignity. Many argue that *ubuntu* is a redundant term that encapsulates the same idea as human dignity. The opponents of *ubuntu* further argue that the spirit of *ubuntu* is already contained in other fundamental rights in the Constitution. In this paper I will argue that although *ubuntu* includes the concept of human dignity it entails more than just that. I will furthermore argue that despite South Africa’s liberal constitution *ubuntu* has a contribution to make in the current constitutional dispensation, specifically in light of the fact that South Africa is a diverse country.

Ali Dehghan

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Survey on the Social Preventions in Golestan and Boostan of Saadi

Golestan and Boostan of Saadi contain the important social ideas. Saadi focuses on the human behavior and his interaction with others in his works. By such function, these works have not been investigated from social preventions and their role in reduction of crimes. This paper refers to record of crimes in literature and types of social preventions and its application in the society and investigates human behavior and confrontation with crimes. Social prevention is the main teaching of Saadi concerning to prevention of crime and its different consequences. In his opinion, prevention has many functions. Prevention of crime that is carried out by a rational process can be effective in establishing healthy environment and probation of public behavior.

Alani Golanski

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Why there is Widespread Nonmoral Theoretical Disagreement in Law

Although many legal positivists have in the past decade come to accept the view that there is a necessary connection between law and morality, they have remained committed to the central thesis of legal positivism – that we can decide what the law is without committing ourselves to a view about which decision would be morally right. The most powerful challenge to this thesis, however, has rested on the belief, accepted by some but not others, that theoretical disagreement in law is pervasive. This is because moral assessments are typically controversial and subject to substantial disagreement. So the received view has been that theoretical disagreement is compelling evidence of law's incorporation of moral notions.

By taking advantage of analytic resources recently being developed in the philosophy of institutions (social ontology), the paper shows that constraints existing in law by virtue of its institutional nature render *nonmoral* theoretical disagreement widely possible, and frequently actual. Because, as a logical matter, all of human institutional reality rests on the assignment of status functions, and is constrained by conditions of intentionality and exactness, those parameters of institutional power similarly constrain legal institutional power. "Theoretical" disputes in law are, in the first instance, best understood as controversies over the standards for determining whether the existing legal materials are sufficiently "directed at" the present circumstances ("intentionality" constraint), and whether they fit the new matter with sufficient exactness ("exactness" constraint). Hence, contrary to the received assumption, theoretical disagreement in law is typically more a matter of fit than justification, and widespread controversy in law does not point primarily to a moral ground for legal validity.

Ronald C. Griffin

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Domestic Surveillance

It is a sad fact. Americans have trouble with people who aren't like them. The Alien and Sedition Acts mark the beginning of our bad times. Abraham Lincoln's suspension of the writ of habeas corpus during the Civil war made things worse. The country did not escape the twentieth century unscathed. The Palmer raid in the 1920's and FBI investigations of civil rights leaders, in the 1950's and 1960's, mark ugly times in American history. This article begins with the findings in the Church Committee Report and ends with Edward Snowden's disclosures about government spying. There is a review of the pertinent laws constraining government action and a parade of recommendations to curb government excesses.

Helga Haflidadottir

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International Enforcement: A Case for Progressive Development

Contemporary international law is often characterized as having evolved from traditional bilateral relations between states towards greater emphasis in the significance of states abiding with common international interests. This account of progress has often been affiliated with the emergence of the concept of the “international community”; a concept employed as a framework around universal values attributed to human solidarity and changed international landscape. However, despite accounts of progress in international law, little advancement has been made in enforcing common international interests. This is primarily to do with the fact that, both in practice and theory, the nature of progress within in international enforcement has not advanced in a parallel manner as it has in international law has in general. Resulting in a significant gap between the requirements and the purpose of the international community and the effectiveness of international enforcement. At present, international enforcement is still primarily rendered legitimacy through the principle of self-help. This article, by focusing on the progress discourse in international law, argues that in order to enhance the effectiveness of international enforcement its theoretical underpinnings must be broaden beyond that of self-help measures. While the study recognizes that some advances have been made within the area of collective international enforcement, it is observed that the progress narrative that has increased the authority of international law in some areas has done so to a much lesser degree within the area of international enforcement. The article concludes with the consideration that in order to increase the effectiveness of international enforcement it is of significance for its theoretical tenets to correspond to the structural changes that contemporary international law is associated with and that the language of progress can be employed to render collective international enforcement increased legitimacy.

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&

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**Commissions Fighting Corruption or Star Chambers?
Some Issues Arising from the NSW ICAC Investigation
into Margaret Cunneen**

The last quarter of the twentieth century saw governments in a number of common law countries establish new organisations to deal with the perceived threat from serious fraud and/or corruption within government and its agencies. Some of those new bodies were given powers to compel organisations and individuals to produce documents and for witnesses to answer questions. While there have been some important successes, there have also been some spectacular failures and criticisms. The paper will examine as a case study the Independent Commission Against Corruption for the State of New South Wales in Australia and, in particular, the recent decision of the High Court of Australia in *Independent Commission Against Corruption (NSW) v Cunneen* [2015] HCA (15 April 2015) where the High Court noted citing the second reading speech in Parliament from the then Premier for the State of NSW when the body was established, stating that 'its charter will not be a crime commission. Its charter is not to investigate crime generally. The commission has a very specific purpose which is to prevent corruption and enhance integrity in the public sector'. Margaret Cunneen is a Deputy Senior Crown Prosecutor of the State of New South Wales. In 2014, she was summonsed to appear before ICAC which was holding a public inquiry as to whether she had with her son attempted to pervert the course of justice in allegedly telling her son's girlfriend to pretend to have chest pains so as to avoid police who were investigating the scene of a car accident from taking a breath analysis of her blood alcohol reading (despite the fact that the son's girlfriend returned a zero blood alcohol reading from a sample of her blood later taken at hospital). Cunneen instituted proceedings seeking a declaration that ICAC was acting beyond its powers. The High Court agreed. The backlash, however, from certain politicians and parts of the media to the High Court's judgment has seen calls for retrospective legislation to be passed by the NSW Parliament to confirm the corruption findings from previous ICAC investigations that may be affected by the judgment. Meanwhile, there has been no apology to Cunneen from ICAC.

Sara Anne Hook

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&

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The State of E-Discovery as Social Media Goes Global

With the series of decisions in *Zubulake v. UBS Warburg* and the revisions to the Federal Rules of Civil Procedure, a new field within legal practice appeared, the law regarding electronic discovery (e-discovery). Although the phase of litigation known as discovery has existed for many years, with opposing parties and their lawyers making requests and exchanging documents that are relevant to a case, e-discovery transformed this process from the paper-based, pre-Internet world of discovery to a whole series of rules and decisions related to how to identify, collect, preserve, analyze, review, produce and present electronically-stored information (ESI). Not only is this evidence in digital form, but it also exists a wide range of media and formats, from word processing and spreadsheet files to photographs, blog postings, videos, emails and websites. Recent debates and court decisions have focused on electronically-stored information posted on social media sites such as Facebook as well as more informal and transient communications involving text messages and new services for mobile devices, such as WhatsApp and Snapchat. As the co-authors will demonstrate through current cases, each new technology that generates electronically-stored information is an opportunity to trace its path through the phases of the e-discovery process, to note the legal, technological, logistical and ethical issues at each phase and to consider any special challenges that lawyers and their support teams might face. This research is particularly timely, given that the U.S. Federal Rules of Civil Procedure are being significantly revised again. Among the revised rules that will become effective on December 1, 2015, if approved by the U.S. Supreme Court and Congress, are several that directly impact electronically-stored information, including Rules 16, 26, 34 and 37, with the goal of making the e-discovery process more efficient and less burdensome and costly.

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Sanctions for the Fraudulent Directors in the Insolvency Procedure of Romania

In time, the Romanian legislation in the insolvency domain has known a series of amendments, the latest one of which took place on June 25, 2014 and was promulgated by Decree No. 473 / 2014 by the enactment of the Insolvency Code. At present, there are two applicable legal documents: Law No. 85/2006 referring to the insolvency procedures initiated before June 27, 2014 and Law No. 85/2014 referring to the insolvency procedures initiated from June 28, 2014 onwards.

After analyzing the provisions of Law no. 85 /2006, it can be noticed that the director of a company in insolvency can be personally held liable for not submitting the request of initiation of the insolvency procedure, not submitting the necessary documents for analyzing the economic and financial status of the company, and when he carries out certain actions causing the company's insolvency state. In practice, the director was personally held accountable for not submitting the petition of initiation of the insolvency procedure on just a few occasions because it refers only to its prematurity. However, for failure to submit the accounting documents, the legislator set out, in time, a series of sanctions such as fines or even imprisonment, but without binding the director to collaborate with the legal administrator in order to deliver the accounting documents. The lack of an efficient sanction has led to the absurd situation in which a high number of insolvency files end without the insolvency practitioner having even seen any documents of the debtor company. Furthermore, the law sets out in article 138, in an express and limitative way, a series of offenses that, if proved to have been committed by the directors and if they caused the debtor's insolvency, could lead to holding the director personally liable. The application of that mechanism has encountered obstacles, on the one hand due to the lack of accounting documents, and on the other hand due to the restrictions set out by the legislator (limiting the offenses for which the director can be held liable and the necessity of a direct causality relationship between the offense and the insolvency state). Under these circumstances, the insolvency experts complained, on the one hand, about the absence of an efficient system that would make the director deliver the accounting documents, and, on the other hand, demanded the creation of a mechanism that could lead to holding the persons guilty of having made the companies enter the insolvency state personally liable.

Law no. 85/ 2014 (also named the Insolvency Code) responded to these requirements by reformulating article 138 that allows holding the guilty persons who contributed to the insolvency state liable for any offense committed with intent. Basically, the deeds for which the director is liable are no longer limited by the law, the causality relationship is no longer limited to a direct cause, yet the contribution to the insolvency state is sufficient and, last but not least, the director will be personally liable for not delivering the company's accounting documents.

Moreover, for the first time in the insolvency legislation of Romania, a non-patrimonial sanction is introduced for the director found guilty of beginning the insolvency of a debtor, that being that he can no longer be appointed director or if he is director of other companies, that right would be terminated for him for 10 years since the date when the decision concerning that aspect remained final.

Although until the entry into force of the Insolvency Code, we asked that some harsh punishment measures be found for the dishonest or fraudulent directors, as far as the institutionalized non-patrimonial sanction is concerned, we are criticizing the severe, irremediable and inflexible solution the Romanian Legislator has found.

Rita-Marie Jansen

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Medico-Legal Implications of ROP (Retinopathy of Prematurity) in South Africa

This paper addresses the professional liability of ophthalmologists treating and screening infants at risk for the development of retinopathy of prematurity (ROP). ROP is a sad and potentially blinding condition in premature babies, which in many cases can be prevented through timely intervention. In some cases, despite expert screening and treatment, it still ends in blindness.

At present a number of legal challenges are underway where compensation is sought for children who suffered vision loss due to ROP and where negligence on the part of the treating physician is alleged. Advertisements by attorneys in newspapers, invite people affected by ROP to consider litigation. This constant threat faced by ophthalmologists has a sinister consequence: Fewer are prepared to screen these babies and the pool of experts might shrink leading to lower levels of care for at risk neonates.

The common law, as well as relevant sections of legislation (such as the National Health Act, the Consumer Protection Act and the Constitution) will briefly be outlined. South Africa is a resource scarce country and it is imperative that health professionals and legal experts design the best workable solution to address the above conundrum.

Rene Koraan

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The Coming of Age of Juvenile Justice in South Africa: 21 Years into Democracy

Children are a vulnerable group of society and when Nelson Mandela became president of South Africa in 1994, his rhetoric focused on the rights of children, and in particular the plight of children in detention. Cross party political will to prevent the detention of children wherever possible was strong because, among other reasons, many of the new leaders had been detained in the appalling conditions of South Africa's prisons.

Reflecting this political will, the *Constitution of the Republic of South Africa, 1996* ultimately contained an article dedicated to children, including a provision regarding the detention of children. Within the first year of the new Government coming into office, Parliament had passed one of the most significant developments for children in conflict with the law. The amendment to section 29 of the *Correctional Services Act* prevented the holding in police cells or prisons of children under 18 years for longer than 24 hours after arrest with the provision that children over 14 and under 18 years charged with serious offences, which were listed in a schedule to the Act) could be held for 48 hours. The aim of the legislation was that children should be sent home to await their trials. Where this was not possible the new law provided that they should be accommodated in a place of safety. The *Child Justice Act 75 of 2008* was assented to on 7 May 2009 and it only came into operation on 1 April 2010. Some of the main aims of the Act are to establish a criminal justice system for children in accordance with international law and the Constitution; to expand and entrench the principles of restorative justice; and to balance the interests of juvenile offenders, society and the rights of victims. The introduction of the *Child Justice Act 75 of 2008* represents a milestone in South Africa's response to children in conflict with the law.

Despite South Africa's progressive legislation pertaining to children, the implementation thereof has been slow and painful. In this paper the progression of legislation pertaining to juveniles in conflict with the law over the past 21 years, will be discussed as well as the implications of the implementation thereof.

Stephen Legomsky

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The U.S. Immigration Debate and the Limits of Executive Power

In the United States, immigration policy has always been the subject of passionate debate. In recent years, however, the substance of the policy has been eclipsed by an epic legal and political debate over process. The U.S. Congress and the President have been at odds over the scope of the President's discretion in formulating priorities for the deployment of limited immigration enforcement resources. In the face of congressional inaction on the issue of what to do with the estimated 11 million undocumented immigrants currently living in the United States, the President in 2012 and again in 2014 announced temporary reprieves from deportation, and temporary work permits, for individuals who meet specified criteria and warrant the favorable exercise of individualized discretion.

The President's opponents argue that these executive actions are unconstitutional and have taken the battle to the halls of Congress, the federal courts, and the media. In Congress, the opposition has threatened to sue the President, impeach him, shut down the Department of Homeland Security, block the appointments of his Cabinet nominees, and take a range of other retaliatory measures unless the recent executive actions are dismantled. Lawsuits have also been filed, with mixed results, and the issue is likely to reach the Supreme Court.

I recently returned from a two-year leave of absence to serve as Chief Counsel of U.S. Citizenship and Immigration Services (the agency charged with implementing these initiatives). Now back in academia, I have recently been the main expert witness testifying before both the House and the Senate Judiciary Committees in support of these actions. This paper will describe the executive actions, explain the critics' constitutional concerns, and argue that their objections ultimately fail to withstand scrutiny. In the process, the paper articulates what I see as the legal limits on executive enforcement discretion generally and demonstrates that the President's recent actions on immigration fully respect those limits.

Itumeleng Lephale

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The Extent of the Scope of Punishment

One of the reasons for imprisonment is to provide offenders an opportunity to reform. The aim is thus to offer offenders a second chance. This practically means that upon release from custody offenders should be free to pursue any possible means to lead a constructive life. Thus the scope of punishment should not go beyond the bounds of prison walls. To take the scope of punishment beyond imprisonment would defeat the very purpose rehabilitation. For those who have been imprisoned, the rebuilding of their lives will include an opportunity of employment. Many employers are, however, hesitant to employ ex-convicts. This hesitance to employ ex-convicts basically turns into the marginalisation and exclusion of ex-convicts into the labour mainstream. This sort of exclusion is seen by many as a second punishment, which falls foul to the idea of reincorporation of ex-convict into the community. This paper will impugn the view that ex-convicts cannot be trusted with employment and thus should be side-lined in the labour mainstream.

Kenneth Lewis

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The Namibian Holocaust: History Repeated and the Consequences Thereof

According to eminent scholars, “[t]he term genocide was coined in 1944 by Polish law professor Raphael Lemkin, who combined the Greek *genos* (race or tribe) with the Latin *cide* (killing). Although the term is modern, the underlying acts are not.” In fact, although the most famous modern genocide is arguably the Jewish Holocaust of World War II, it was not the only genocide of the Twentieth Century, and, the Namibian Holocaust of World War I that went unchecked and unpunished lead to the climate, ideology and environment that contributed in great part to the genocide of the Jews during World War II. “The Namibian Holocaust laid the ground work for the Nazi Holocaust.” Thus, the Third Reich was not the first regime in the Twentieth Century to carry out the atrocities that we associate with mass murder and ethnic extermination.

In this article, I examine the climate and ideology that gave rise to the Namibian Holocaust. I further analyze how, in failing to punish Germany for its atrocities in Namibia, the international community may have created the climate for the Armenian and Ethiopian Genocides. In addition, because some scholars argue that the crime of genocide was only made punishable after World War II, I analyze and discuss whether, under international law, Germany should be made to compensate the Namibian people for the genocide that Germany committed during World War I.

Ffion Llewelyn
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Householders and Self-defence: why Permit Disproportionate Force in Criminal Law?

Self-defence is a well-established defence, and is widely recognised as a complete defence to crimes of violence across most common law jurisdictions. For the defence to be successful, the law of England and Wales requires evidence that the defensive force used was reasonable in the circumstances. Reasonable force has traditionally required two components: a necessity to act, and a proportionate response to the threat. For many years there has been a growing concern and public perception that the reasonable force standard is unfair, that it criminalises the defender (the true victim of crime), and fails to punish the aggressor. Cases involving intruders in the home, known as householder cases, were identified as special circumstances meriting enhanced legal protection. This culminated in a new legislative provision in section 43 of the Crime and Courts Act 2013. According to the new provision, force need no longer be proportionate in the context of householder cases. Thus, disproportionate force may be allowed, providing it is not grossly disproportionate.

This paper will examine the background of this legislative amendment and consider the practical implications of allowing disproportionate force. It will be submitted that the change creates confusion and inconsistency within the law by applying two separate tests based upon the location in which an attack occurs. The paper will question whether such a distinction between attacks occurring in public and private places is justified, and whether the change of legislation was in fact necessary.

Loyiso Makapela

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Soft Law Mechanisms as Instruments of Regulation for Multinational Enterprises: The UN Guiding Principles and the Evolution of the Business and Human Rights Discourse

The sphere of business and human rights has been the host of many a debate in the past decades, the most contentious of which has been the debate surrounding the use of soft law as a regulatory instrument. Indeed, the past few years have seen an interesting trend develop through the creation of numerous sets of principles, standards, voluntary initiatives and human rights benchmarks, to name but a few. Consequently, questions have been raised time and time again as to the effectiveness of soft law instruments, particularly in the context of regulating the operations of multinational enterprises in relation to their impacts on human rights. This dissertation looks at the different debates surrounding these questions and explores the meaning of the concept of soft law as well as the instruments it has used in the past and at present, most notably the UN Guiding Principles, as a mean of regulation. The different aspects that contribute to the difficulties faced in the business and human rights discourse with regard to the effective regulation of multinational enterprises are explored, in a bid to illustrate the flexibility, utility and function of soft law instruments as adequate and effective regulatory mechanisms.

Michael Malloy

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Risk Management in Financial Services

In November 2014, the Board of Governors of the Federal Reserve System (FRS) adopted revisions to its *Federal Reserve Policy on Payment System Risk* (PSR policy) to reflect the prevailing international standards, the *Principles for Financial Market Infrastructures* (PFMI), developed by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO), and the supervisory framework for designated financial market utilities (FMUs) established in Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act).

As of 2015, the FRS will be guided by the PSR policy revisions when exercising its authority with respect to risk management policies of financial institutions. Furthermore, as of year-end 2015, the FRS expects to begin applying the revisions to transparency issues; plans for recovery and orderly liquidation of financial institutions; rules and procedures that explicitly address uncovered credit losses and liquidity shortfalls; maintaining sufficient liquid net assets funded by equity and raising additional equity as necessary; and, managing risks arising in “tiered participation arrangements” involving financial market infrastructures.

The paper assesses the extent to which the FRS revisions adequately conforms with the PFMI and the Dodd-Frank Act. It argues that the PSR policy would have useful applications to other regulatory programs involving financial institutions, such as national banks in the United States, which are subject to the authority of the Comptroller of the Currency rather than the FRS.

Lisa Mountford

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Gender Adjustment in English Criminal Law: Is the Female Voice Really Being Heard?

The paper seeks to explore the gender re-adjustment of the criminal law in England and Wales with comparative analysis.

The paper will contend that substantive criminal laws need to be responsive and adaptive and should reflect changing social attitudes, values and beliefs. Criminal laws should be gender neutral and free from stereotypical, patriarchal assumptions about females as both victims and perpetrators of serious crime. Such an aspiration can only be delivered through legislation, supported by robust prosecution policies and a socially aware judiciary.

The paper will cover the following areas:

1. The ethos behind the Sexual Offences Act 2003 which redefined the offence of rape in English criminal law. Rising conviction rates will be explored (although concerns are still expressed on the overall conviction rate for rape) as well as prosecution policy in this area and adjustments to the trial process to support victims of rape.

2. The reform to murder laws in England and Wales brought about by s 54 and 55 Criminal Justice and Immigration Act 2008 which provides a partial, excusatory defence to murder on the basis of a loss of control. These provisions were expressly enacted to address a gender bias said to favour male perpetrators.

3. Murder in England and Wales has never been statutorily defined. Would a UK government ever consider introducing a new offence of 'femicide' (gender motivated killing of women) by following the recent amendment to the Brazilian Criminal Code?

This paper will ask delegates to consider whether these developments represent a more 'feminised' approach to the development of English criminal law

4. The paper also considers the recent criminalisation of forced marriage in England and Wales and an analysis of the first (failed) prosecution for female genital mutilation in 2015.

This paper will set out to address whether these developments represent the imposition of 'European/Western values' in the development of the criminal law on an increasingly diverse population.

Although the UK has no specific offence of 'honour killing' it does have a published prosecution policy on 'honour' based violence and a very recently published (2015), all encompassing strategy on violence against women and girls aimed at improving prosecutions and

supporting victims.

5. The paper will also address the inherent difficulties of addressing such issues in a Law School whose students are from diverse cultures and religions under which the equal position and status of women is by no means universally acknowledged.

The paper will conclude by suggesting that significant steps have been made in the development of English criminal law to protect vulnerable females and to eradicate patriarchal myths.

Jorge Emilio Nunez

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Sovereignty Conflicts and the Desirability of a Peaceful Solution: Why Current International Remedies are not the Solution

As with any kind of conflict, sovereignty issues can be addressed in a variety of ways and – possibly – solved. This paper highlights the main remedies applied at international level and assess why it is reasonable – at least – to doubt the value of their application. Independence, self-determination, the Antarctic solution, and many other remedies are reviewed. Although they may be the answer for some sovereignty conflicts, they present – for the reasons shown in this paper – a certain degree of uncertainty that make us doubt about their value. What I argue and this paper demonstrates is that there is a need for a peaceful solution that the reviewed international remedies cannot offer. What we need is a solution that no party may reasonably reject, whereas what we have is existing solutions that one or more parties may reasonably reject.

David Papke

Professor, Marquette University Law School, USA

Postmodern Decline? Belief in the Rule of Law as a Tenet of American Ideology

A belief in the rule of law has been a central tenet of American ideology since the earliest days of the Republic. This belief not only takes law itself to be a good thing but also subscribes to the notion that clear, practical, and predictable laws guide American life. Indeed, some Americans argue that the U.S. is especially distinctive and honorable as a nation because it stands for the rule of law and opposes the arbitrary rule of men that is common elsewhere.

Ideology, of course, is not reality but rather normative thought that usually fortifies the status quo. The highly regarded World Justice Project, an independent organization based in Washington, D.C. that promotes the rule of law, has used 47 indicators organized around nine themes to generate a so-called "Rule of Law Index." With reference this Index, the U.S. ranked only nineteenth among the 99 nations considered. While this could be a source of pride compared to Greece, for example, which ranked 32nd, or certainly compared to Zimbabwe, Afghanistan, or Venezuela, which ranked 97th, 98th, and 99th, respectively, the U.S. does not emerge as the world's leading rule of law nation.

What's more, in recent years an erosion of the belief in the rule of law has occurred in the U.S. Some have asserted that the U.S. has too much law, an assertion embedded in Bayless Manning's criticisms of "hyperlexis." Then, too, the more scholarly Law & Economics Movement has vociferously insisted the market is a more efficient and reliable organizer of social life than are law and government. Most generally, champions of the increasingly evident postmodern society reject formal legal institutions and their claims of reason and authority. Overall, a belief in the rule of law may be slipping from its place in the pantheon of American ideological premises.

Adoracion Perez Troya
Professor, University of Alcala, Spain

Improving Gender Balance among Directors of Companies. A Proposal of a European Directive and Recent Advances in Europe

The Law is not the only way to ensure equality between women and men but is probably the most powerful tool. In the areas in which rules have been imposed progress has been remarkable. One area in which remains still great inequality is in the boards of companies. Women are normally not appointed as directors.

However, the adoption of standards in different countries to build progressively greater equality in this field is again demonstrating the power of *lex*. There is, however, much controversy at international level since important sectors rejects the "quota system" as a solution for this problem.

In my paper will be pointed out the progress made in countries that have developed a regulatory system (Norway, France, Italy) and the solutions of "soft law" proposed by others (United Kindom, etc), including Spain.

Particular attention will be given to the recent proposed European directive on the subject, which contents a developed set of rules and represents an important milestone in the field. It's the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures (COM (2012) 614).

Biography: Adoración Pérez Troya (Sabadell, Barcelona, 1965) studied Law at the Autonomous University of Barcelona (UAB), being awarded as the best student promotion (Premio extraordinario de Licenciatura). PHD University of Alcalá (Madrid), spending some semesters as visiting research fellow at Queen Mary College (Univ. London) and the Institut für Arbeits-, Wirtschafts- und Zivilrecht (Univ. Francfort). Some years Assistant prof. at University Pompeu Fabra (Barcelona) and currently is Profesora titular de Derecho mercantil at the Univ. of Alcalá (Madrid), where I was Vicedean of the Law Faculty and later Director of the Private Law Department. Research focus on Company Law, Mergers & Acquisitions, Intellectual Property Law and Gender Law. Author of different publications on gender equality in the field of companies and business.

Kleoniki Pouikli

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The Role of the Environmental Principles in the Effective Protection of the Environment: The Case of the "Polluter Pays Principle"

The environmental law -placed in a multidimensional verge among traditional legal rules, policy making concepts, technical or financial strategies, ecological practices and social needs- presents undeniably a complicated and multifaceted nature which tests sorely its efficiency. Moreover, the universality of the modern environmental issues as well as their diffuse nature without regional and temporal limits leads to the inevitable interplay of the environmental rules in a national, european and international level which may resort to heterogeneity and fragmentation. In order to temper these problems, the environmental principles emerge as the suitable extroverted and supranational instrument that can assure a multilevel stability and coherence regarding the interpretation and the application of environmental law both by the legislation and the jurisprudence. By having a solid conceptual core and at the same time a flexible and indefinable contour, the environmental principles function not only as a mechanism of filling legal gaps but also as a pluralistic interpretative tool which guide judicial decision making, describe and promote individual rights and reinforce the combined interpretation of legal rules. The "Polluter Pays Principle" - cornerstone of the international as well as the EU environmental law- constitutes particularly the background for several instruments of environmental protection such as the environmental responsibility, the environmental taxes and the "green fees", the control of State aids, the system of "tradable permits", the regulation about "*Eurovignette*". Having an amorphous but pragmatic nature it develops a double function aiming to deal efficiently with the uncertain and non linear character of the environmental damages and risks: on the one hand it imposes the internalization of the ecological costs and on the other hand it regulates the financial distribution of these costs among the responsible parts.

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Fair Competition Law and Policy in the Rise of Asian Economic Community (AEC) on SMEs in ASEAN: Some Critical Observations and Recommendation

The Asian Economic Community (AEC) 2015 integration process have proposed all the ASEAN member states to liberalize their market by introducing the fair competition regime and regulate the anti-competition practice in their state. Competition law generally upholds the concept that all players in the market deserve to have an equal opportunity to enter the business market of that sector. Fair competition concept of law dismisses all forms anti competitive practices such as monopoly, oligopoly or protected market in which entry is limited and controlled. The fore the competition law in principles could liberalize market, improve market efficiency market and encapsulate innovation and entrepreneurship and on the downstream improve price, services and choices of the consumers. However alternatively from a different dimension of the legal implication, the Competition law is feared would lead the bigger and established enterprises with a better competitive edge and strength to drive out or wipe out totally some of the small and new competitor in the market. Generally SMEs fear the open competition concept and contestable market as a threat to their very limited and toned down market share in comparison to the bigger established counterparts such as the Multi National Corporations (MNCs). This is the biggest fear of the SMEs community in ASEAN who seeks the government to totally exempt and protect them from the rigors of Competition Act. The real fear and challenge in the opinion of the writer is to evaluate how prepared are the SME's to embrace this new competition regime to their best in their respective nation and how best can the relevant regulatory provisions and the competition authorities at the national and ASEAN level, help and facilitate the SMEs in this mostly emerging market economy nations to adopt the fair competition law.

This paper seeks to address and discusses some critical aspects of the law which have, both positive and negative implications on the SMEs in ASEAN with respect to their market share, price fixing culture, SMEs related trade organization activities, education and awareness, effectiveness of the competition advocacy and preparedness to embrace competition law in their region. This paper also points out the unique role of the ASEAN, state governments and the competition authority with respect to competition infringement cases on SMEs in ASEAN. Specific legal recommendations are made with reference SMEs in ASEAN with reference to some regulatory tools and policy practiced in

other jurisdictions which could be adopted, to better deal with anti competition regulations in their respective state in pursuance of the ASEAN to mission to realize the AEC policy.

Vicenc Ribas Ferrer

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Corporate Governance in the European Listed Companies and Financial Institutions

The paper deals with corporate governance problems of listed companies and credit institutions from its recent evolution of the European Union law. The work realign the corporate governance issues that are covered by Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms, to aspects that have been raising in Europe during the last decade.

We discuss three groups of subjects related to corporate governance of listed companies. First, the management of the corporation, distinguishing between the composition, structure and functioning of the board, and the director's duties and responsibilities. Secondly, we analyze the requirements of transparency of listed companies and the participation of shareholders and investors. Finally, we discuss the management compensation, treating the remuneration policy, the annual remuneration report, specific remuneration and stock compensation.

In relation to credit institutions, the content is divided into two parts. The first is aimed at the study of general corporate governance issues connected to risk management. At this point we discuss the general principles, the special rules of corporate governance for risk management, the directors' duties and the duties of transparency, as well as the management of internal information. The second part is limited to the study of the specialties of the remuneration of directors of credit institutions. On the one hand, we deal with the remuneration policy and the effective risk management; on the other, the article refers to the particularities of the variable remuneration. Finally, we consider the obligations of transparency on remuneration, distinguishing between qualitative and quantitative information.

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&

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Territoriality or Universalist Doctrine of Transnational Insolvency: Case Study

The process of globalization has intensified international trade relations, culminating in the emergence of multinational corporations with transnational operations, like OGX International GmbH. This paper demonstrates the gaps in Brazilian Bankruptcy Law. Discussing on ways to boost the growth of regulations in transnational insolvency and analyzing the lacking process in Brazil. The author explores the Brazilian leading case: OGX group used international companies to issue bonds and subsequent investment in Brazilian operating companies. Thus, domestic enterprises became guarantors of the debts taken from international creditors and international companies devoid of financial and managerial autonomy. The hypothesis is presented: How will the process of cooperation between Brazil and Austria (residence of OGX International GmbH)? Justified the study presented here because it aims to demonstrate the need to improve the procedural methods of theoretical models proposed to deal with transnational insolvency: the Territoriality model and the Universalist model. The overall objective of this research is to analyze the interaction of transnational insolvency standards is effective or not in the international economic Brazilian system. The specific objectives are: (I) to identify which parameters can be considered to endorse the effectiveness of international standards in the Transnational insolvency, particularly UNCITRAL and Chapter 15; and (II) to study the accessibility of transnational rights in Bankruptcy Law. The methodology used in the study: (i) theoretical research with analysis of primary sources (research existence of treaties on the subject) and secondary (through literature review); (ii) use of the comparative technique to understand the overall; and (iii) case study. The author has chosen a work based on a literature review addressing aspects of criticism of Brazilian Bankruptcy Law.

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Compliance: Will Accuracies the Liability Administrator?

After the Basel Accord (1988 - Basel I) and cases of Enron and Worldcom (both in 2000), and in consequence of them, it was enacted Sarbanes-Oxley Act (SOX - 2002). Thus, the internal control structures were raised to legal duty on corporations, wishing to open the share capital or are already open and operating capital in the stock market. Given this new context and market needs, it was necessary that the legal institutions evolve and internal control structures too - called "best practices" - were developed to meet the dynamic and computerized market in the "Contemporary Era". All laws and elaborate guidelines aim to ensure the ethics of economic legal relations and transparency to the market, particularly in business relationships. The publicly traded corporations, increasingly seek to create mechanisms of internal control, especially with a view of prevention, since the business activities of a company suffer economic losses from the lack of transparency, match-fixing and abuse of power. These issues are related to the misuse of purpose or non-compliance with laws and administrative regulations and the limiting mechanisms and extinction of these risks deserve to be studied, such as the Compliance. The need of studying how to organize an area in publicly traded corporations that prevents the damage caused by the bad practice of trading activities is what it is searched in this study of Compliance. If it were possible for the company to prevent the practice of illegal activities of managers and controlling shareholders, the corporation publicly traded would have less chance of suffering irreparable damage. Maybe there was less breakage of companies and the need for legislation to establish the repressive and punitive instruments on corporate practices. As for the overall goal, this study aims to study the Compliance in the context of informational Brazilian society of XXI century. With respect to special purposes: (i) highlight the responsibilities of management (Management and Board of Directors) and the Supervisory Board of joint stock company of Public Company; (ii) differentiating Compliance from similar institutions; and (iii) diagnose whether the culture of a particular region of Brazil also influences the behavior of managers. The author has chosen a work based on a literature review addressing aspects of the major innovations and criticism of Compliance within the Corporate Law segment of the industry.

Javier Rodriguez Olmos

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Fundamental Rights and Property Law in Colombia: From (private) Property as Constitutional Right to the Limitations of Property to grant Constitutional Rights

As in the majority of Western Countries, Colombian legal tradition enshrined property rights in its Civil Code as an absolute and arbitrary power. However, throughout the years a different approach has been adopted by the way of legislation and, in recent years, thanks to the developments in constitutional case-law. The aim of this paper is to describe the legal developments around Property law in Colombia from the perspective of Fundamental Rights and their significance for the current peace process.

The social, economic, cultural and historical particularities of Colombia have led to a high degree of land ownership concentration; this situation has been exacerbated over the last decades by the high rates of forced displacement as a consequence of internal violence. In order to deal with these problems, since 1936 the general clause of “social function of property” has been incorporated into the Colombian legal system; this general clause was subsequently boosted with the new Constitution in 1991, in which, in addition to the “social function” was recognized an “ecological function”, and new forms of property were introduced, in particular collective ownership in order to grant protection to indigenous and Afrocolombian communities.

From that moment on, with the new Constitution – and the creation of a Constitutional Court – a phase of case-law development started. While property is still being regarded as a Fundamental Right, strong limitations to its exercise have been introduced, on the basis of the “social and ecological function” clause, limitations that go beyond the classical instruments of expropriation and expiration of ownership.

Moreover, constitutional case-law has applied the clause of “social and ecological function” of property to the so-called “*bienes baldíos*”, i.e., a kind of State-owned land designed to ensure rural population progressive access to land. This means that the “social and ecological function” clause has a cross-cutting nature involving private property as well as State-owned property, in the search of better equality; it is all the more relevant in the context of the current peace process, in which one of the fundamental issues has to do with redistribution of land.

Whitney Rosenberg

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The Illegality of Baby Safes as a Hindrance to Women who want to Relinquish Their Parental Rights

A recent study by Dee Blackie consultant to the National Adoption Coalition of South Africa (NACSA) indicates that Child Welfare South Africa estimated that more than 3500 babies were abandoned in South Africa in 2010. It goes on to state that most child protection organizations believe that the numbers of abandoned babies have increased significantly over the past decade. Anonymous child abandonment has been criminalised, with mothers facing a range of charges such as concealment of birth and attempted murder. Baby safes are considered illegal but are nevertheless being opened up more frequently in countries such as Germany given the increase in the rate of abandonment. With an increase in the rate of abandoned babies found in drains, fields, pipes, toilets, sewers and gutters, is it not time for South Africa to implement baby safe laws before more innocent lives are lost? The United Nations Convention on the Rights of the Child contains two articles on the protection of the identity of the child. Article 7 states that children have the right to a legally registered name and nationality. Children also have the right to know their parents and, as far as possible, to be cared for by them. Article 9 states that children should not be separated from their parents unless it is for their own good (if a parent is mistreating or neglecting the child). Children whose parents have separated have the right to stay in contact with both parents, unless this might harm the child. The contrary argument is 'does Article 6 the child's right to life not supercede a right to an identity?' In a country such as Australia abortion and illegal abandonment in the absence of legal abandonment are the only two options a woman feels that she has and as a result there has been a considerable increase in the rate of abandonment. France, although a party to the United Nations Convention on the Rights of a Child, has adopted a pragmatic approach that values the rights of the mothers above those of the child. The question here is whether this approach is not too extreme. Can we then use the extensive baby safe haven laws of the U.S.A as a possible middle ground? Beginning in Texas in 1999 "Baby Moses laws" or infant safe haven laws have been enacted as an incentive for mothers in crisis to safely relinquish their babies to designated locations where the babies are protected and provided with medical care until a permanent home is found. To date 50 states, the District of Columbia and Puerto Rico have enacted safe haven legislation for the purpose of protecting newborns.

This paper will provide an analysis on the possible way forward for South African Family Law in establishing baby safe haven laws that will allow women the right to legally abandon their babies anonymously and thus decrease the number of abandoned babies left for dead in open fields, toilets and drains. It will achieve this by a comparative study of the laws in various countries as well as by dealing with the fears behind this possible solution.

Irina Sakharova

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Legal Frameworks for Leasing in Comparative and International Perspectives

This paper considers the legal aspects of finance lease as an economically important institution and focuses on the problems associated with coordinating the rights and duties arising for three persons from two bilateral transactions—on the one hand, a leasing contract (between lessee and lessor), and on the other, a supply contract (between lessor and supplier). It argues that finance lease gives rise to the creation of a special legal connection between the lessee (who is not a party to the supply contract) and the supplier (who is not a party to the leasing contract). By creating such a connection, it is possible to implement a regime that exempts the lessor—a financier—from a number of duties and risks that would normally be incurred by a purchaser. The legal nature of this connection (i.e., between lessee and supplier) and the manner in which it is implemented in technical terms have been debatable questions irrespective of the model of the legislative regulation of finance lease.

The study demonstrates that in different jurisdictions various theories are used to articulate the rights and duties of three persons arising from two contracts. The differences can be seen most clearly in how countries address the relations between the supplier and the lessee. The peculiarities of the regulation are important and should be considered when formatting cross-border transactions. The paper shows the difficulties that the UNIDROIT faced while unifying financial leasing in the Convention and especially while drafting more recent Model Law on Leasing. It concludes that despite the development of legal frameworks for finance lease in many jurisdictions, the necessary clearness in coordination of rights and duties of the three participants has still not been fully reached in some of them. The finding suggests that it is possible to introduce new mechanisms to properly address the three-way relationship in frame of two contracts.

Elfriede Sangkuhl

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The Rise and Fall of Income Tax

Imposing income taxes only came into general practice in mature economies at around the time of World War 1 in the early 20th century. Up until that time nation states raised sufficient revenues by levying indirect taxes; sales taxes, tariffs and excise taxes. Income taxes, where imposed, were only a minor contributor to government revenues at that time. The pressure on state finances due to the cost of the World War lead to the 'temporary' acceptance of taxes on income.

Income taxes were not in favour due to the economic thought of the day and the administrative difficulties with raising and collecting such taxes. This lead to the view that imposing income taxes would lead to 'a "lie and cheat system" with the burden on the classes less able to pay'. Even though Seligman held the above view in 1903, by 1911 he was advocating for the introduction of income taxes as a measure to redress inequality and 'make private wealth more subservient to the public weal.' Income taxes, personal and corporate, became the most significant State tax after World War Two. However, since the rise of neo liberal ideology in the 1970's, the importance of income tax has been in decline.

This paper charts the rise and fall in the importance, and acceptance of, income tax in the 20th century and relates this rise and fall to the prevailing economic ideology of the times.

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The Access to Information in MERCOSUR for Sustainable Development

Civil society must integrate the decision-making processes involving inalienable rights, such as the protection of the environment, given that, pursuant to article 225, of the Federal Constitution of Brazil of 1988, the responsibility of defense and protection of the ecologically balanced environment for present and future generations is both of the Government as the community, since environmental quality is indispensable for a healthy and dignified life. However, without the proper information, the society cannot participate in this process, because there will be no basis for making an appropriate decision. In this way, access to environmental information becomes a implementation tool and the presupposition of public participation in environmental matters, since information is source of knowledge. Within this context, the work analyzes, at first, the environmental information, indicating its concept and importance. After, ponders on legislation that guarantees access to environmental information in the MERCOSUR member countries: Uruguay, Paraguay, Argentina and Brazil. The right to information in the MERCOSUR countries is of utmost importance in view the need for integration of public policies in favor of the environment by this Latin American community, as well as the creation of thematic priorities of environmental education and citizenship, which is directly related with the processes of sustainable development, what was prioritized by the Treaty of Asunción, establishing the MERCOSUR, in 1991. And finally, the paper concludes that information is a basic instrument for building environmental awareness of the population, given that this is the building tool of citizenship and ethics, as well as essential to advance sustainable development, in accordance with Agenda 21. Public policies for environmental education and awareness cannot be performed sectioned and without integration between neighboring countries, that are part of a block that seeks economic integration, political, social and cultural development of the citizens of Latin America, MERCOSUR.

Dwarakanath Sripathi
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Live in Relationship - Vanishing Point of Institution of Marriage

The society in India still considers the institution of Marriage as sacred and a union for eternity. However with the advent of western culture and lifestyle the Indian society is gradually accepting the changing scenario. One of the most significant concepts amongst all is the concept of Live-in-Relationship. This relationship exhibits a characteristic feature and style of living of a man and a woman together under the same roof specific to those couples residing in metro cities. With the passing of time the tribe is increasing. Although the law in India does not declare cohabitation between partners in a live-in-relationship as illegal, but it is deemed to be socially and morally wrong.

The term "Live-In-Relationship" is defined as 'an arrangement of living, under which couples who are unmarried live together to conduct a long relationship similar to a marriage.' But the definition and the ambit of live-in-relationship is very ambiguous due to a dearth of specific law on the subject. Whatever flimsy law that exists is one that is made through judgments of the courts of law which are of varied dimensions. An analytical study of the need for such relationships has revealed certain facts such as lack of commitment, ignoring social and family bonds and finally a lack of tolerance.

Even at the international front laws relating to such relationships are not certain. Many nations have hesitated and still refrain from recognizing such relationships. In order to provide a legal status to such relationships in India, there is a strong need to enact new legislation that will clearly demarcate the rights and obligations of partners in such a relationship.

This paper explores the various dimensions of live-in-relationships in India and outside India. The need to make necessary legislations and the need to recognize the rights and obligations of partners in such relationships.

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The New (C)ensorship

Copyright law has become the weapon par excellence of the twenty-first century censor. Fueled by a desire to prevent one's perceived foes from making certain types of speech, an individual has no better friend. Copyright violations are ubiquitous. Liability can be massive. Copyright suits are difficult to fend off. And, perhaps most saliently to the sophisticated censor, the federal courts in the United States have almost systematically immunized infringement suits from explicit First Amendment defenses. Whether it is a creationist group using copyright law to force the takedown of critical materials put online by evolutionists, abortion rights activists using copyright law to enjoin speech by pro-life forces, or a political commentator vindicating his exclusive rights to recordings of his shows to suppress criticism of a hate-filled rant, examples of this disingenuous use of copyright law abound.

After surveying the growing use of copyright law for censorious purposes, *The New (C)ensorship* examines just how this trend undermines both the vitality of the American copyright regime and public discourse and how some courts have attempted to deal with this problem through the use of procedural machinations, including early adjudication of cases through motions to dismiss. Ultimately, the Article contemplates how the law might better respond as a whole to ensure that copyright law is used to vindicate the appropriate economic interests of rightsholders, rather than to serve as a transparent proxy to censor cultural or political opponents. Specifically, the Article considers adoption of a *New York Times v. Sullivan*-style First Amendment check on a narrow but pernicious class of infringement claims—those where (1) the plaintiff lacks a legitimate economic motivation to preserve an established market for the licensing of its copyrighted works; and (2) defendant's use of the work at issue advances the expression of basic facts or commenting on matters of public concern.

Mihaela Tofan

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The Legal Framework for Mobility of Human Resources within EU. A Romanian Fiscal Liability Approach

The European integration widened the area of activity for Romanian organizations on the markets of other member states, in the context of free movement of services. This freedom is manifested through the ability to provide services in another state without the obligation of the provider to register or authorize a branch (subsidiary) under the national rules of the host state. Moreover, there are effects on regulation in matter of social security for workers, permission to travel, their right to temporary residences etc. The issues of tax liability, in terms of the state entitled to demand the contribution to social security schemes (state of origin or the actual host country), must be analyzed from the perspective of preserving the rights granted to workers.

The lack of precise national regulation in this respect determined a large and heterogene interpretation of the possibilities permitted to the organizations. Different actions asked for a different fiscal treatment and, in the end, they generated very various tax liabilities. The situation developed in the last seven years since the accession and conducted to a controverse case-law experience.

Romanian case-law solutions in these matters determined important changes in the legal framework. Still, the regulation in force is not entirely efficient, some further improvements being proposed, both at national and EU level.

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The Separation of Powers in South Africa

Section 7 states that the Bill of Rights of the Republic of South Africa forms the cornerstone of the South African democracy and that the State is enjoined to respect, protect, promote and fulfil the rights of all people in South Africa. The three arms of government, namely the legislature, the executive and the judiciary, are responsible to assure that constitutional rights are respected, protected, promoted and fulfilled (s 7(2) and s 8(1) of the *Constitution of the Republic of South Africa, 1996* ("the Constitution")). Separation of powers is not mentioned explicitly in the Constitution, but is implied, and prohibits one arm of government to interfere in the functional domain of the others. Each arm has its distinctive functions in terms of the Constitution.

There are several cases where the court had to deal with the issue of interference by the judiciary with the functions of the legislature and executive authority respectively. The classic examples are *Soobramoney v Minister of Health (KwaZulu-Natal) 1998 (1) SA 765 (CC)* (*Soobramoney*) and *Government of the Republic of South Africa v Grootboom 2001 (1) SA 46 (CC)* (*Grootboom*). The Constitutional Court was reluctant to give content to the right to emergency medical treatment (*Soobramoney*) and the right to adequate housing (*Grootboom*) as it would place an obligation on the state. This, the Constitutional Court argued, will enter the domain of the legislature and the executive, and will thus infringe the principle of separation of powers. The Constitutional Court was of the view that ordering the legislature or executive to perform specifically in terms of its distinctive mandate will be inappropriate and infringe the constitutional principle of separation of powers.

The Constitutional Court is entrusted with the special responsibility to give content to socio-economic rights, interpret the substructure of the rights and to investigate the state's conduct with regard to the fulfilment of rights. Not doing so, therefore indicates an attitude of reluctance. In this paper I will investigate the court's reluctance to interfere in the domain of the legislature and the executive and the impact thereof on the fulfilment of constitutional promises in South Africa.

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&

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Creative Commons Licenses for Transmedia Storytelling Content

It is undeniable that witnesses a sharp increase in the flow of information that influence the construction of the society in different ways. For constructive and inventive making this society, communication and information technologies subsidize new ways of recording, storage and distribution of text, sound and images. This offer features enables access of more people to innovative modes of production, creation and registration of cultural goods, knowledge and information. Here lies the indispensability of rereading what shall be to the copyright, the subject of this writing. During the past few decades, the legal protection of authorship of cultural property were based on a control system of space and movement, however nowadays the content is mediated by different platforms (websites, social networks, radio, movies) in order to meet a greater number of viewers / consumers. The content is diluted within a new architecture of actors. One of the greatest examples of this dialogic form of production of cultural goods is a communication strategy that organizes content and platforms to tell a story: transmedia storytelling. Indeed, the reflection of the legal protection of authorship of cultural property in the XXI Century leads to the proposal of Creative Commons, which focus is to create a cultural property of the universe that can be accessed or processed in accordance with the voluntary consent of the author. The aim of this paper is to examine if the author of transmedia storytelling to protect his content can use a legal adaptation of the Copyright Act (LDA - Law 9.610 / 98) proposed by Creative Commons in Brazil. The deductive method, with allowance in literature and the succession of the following steps are used: performs a brief analysis of the history of copyright, we study the doctrine concerning the concepts developed in the text, the procedure is the interpretation of how the transmedia narratives and Creative Commons can relate.

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**The Demise of Necessity;
The Rise of Duress of Circumstances**

The place of necessity as a potential “defence” to murder was seemingly decided in 1884 in the infamous case of *R v Dudley and Stephens* (1884) 14 QBD 273. However, significant doubt has been cast on that authority, certainly since the case of *A (Children) (Conjoined Twins: Surgical Separation)* [2000] 4 All ER 961 (subsequently followed in the Australian case of *Queensland v Nolan* [2001] QSC 174, in as far as that was possible), and indeed, in the Canadian case of *Latimer v R* [2001] SCR 1.

More recently however, in the 2014 case of *Nicklinson*, the (by then deceased) claimant, Tony Nicklinson raised necessity as a defence to euthanasia (murder under the Common Law). This was categorically rejected by the Court of Appeal, and was not even pursued in the Supreme Court. This thus effectively ended any possibility that necessity could be a defence to euthanasia/murder (except as in the very narrow parameters set out in *A (Children)*).

However, this may not be the end of the necessity story; recent academic discourse has demonstrated the perception, by some, that necessity and duress of circumstances are one and the same. In this paper, it will be argued that they are different both practically and theoretically and that, as such, duress of circumstances could be claimed as a potential defence.

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Reflection of Judicial Contents and Concepts in Rumi's Masnavi

Literature and law have an old eternal link. Literature in generally speaking causes and helps the human being's soul to become free. And freedom is one of the basics of law. In one hand literature and law and have an effective mutual interact and interaction on each other. Many Persian poets were lawyer and some of them had a judicial position. This old relationship caused that many judicial, legal and juridical concepts reflect in Persian literature. Rumi's Masnavi in one of the richest encyclopedias in human and Islamic science that is full of this concepts and contents. As Rumi stands on heights of Mysticism and Sufism, have a high rank and position in legal and juridical subjects too. This survey also tries to study and analyze these judicial concepts and contents in this precious oeuvre.