



THE ATHENS INSTITUTE FOR EDUCATION AND RESEARCH

Abstract Book:

14th Annual International Conference on
Law

10-13 July 2017, Athens, Greece

Edited by
Gregory T. Papanikos

2017

Abstracts
14th Annual International
Conference on Law
10-13 July 2017, Athens, Greece

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Preface

This book includes the abstracts of all the papers presented at the 14th Annual International Conference on Law, 10-13 July 2017, organized by the Athens Institute for Education and Research (ATINER).

In total 34 papers submitted by 37 presenters, coming from 13 different countries (Australia, Brazil, India, Israel, Italy, Romania, Serbia, South Africa, South Korea, Spain, UAE, UK and USA). The conference was organized into 10 sessions that included a variety of topic areas such as international law, corporate law, human rights, and more. A full conference program can be found before the relevant abstracts. In accordance with ATINER's Publication Policy, the papers presented during this conference will be considered for inclusion in one of ATINER's many publications.

The purpose of this abstract book is to provide members of ATINER and other academics around the world with a resource through which to discover colleagues and additional research relevant to their own work. This purpose is in congruence with the overall mission of the association. ATINER was established in 1995 as an independent academic organization with the mission to become a forum where academics and researchers from all over the world could meet to exchange ideas on their research and consider the future developments of their fields of study.

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

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

Gregory T. Papanikos
President

14th Annual International Conference on Law, 10-13 July 2017, Athens, Greece
Organizing and Academic Committee

All ATINER's conferences are organized by the Academic Committee (<https://www.atiner.gr/academic-committee>) of the association. This conference has been organized with the additional assistance of the following academics, who contributed by chairing the conference sessions and/or by reviewing the submitted abstracts and papers:

1. Gregory T. Papanikos, President, ATINER.
2. David A. Frenkel, LL.D., Head, Law Unit, ATINER & Emeritus Professor, Law Area, Guilford Glazer Faculty of Business and Management, Ben-Gurion University of the Negev, Beer-Sheva, Israel.
3. Assaf Meydani, Academic Member, ATINER & Professor and Dean, The School of Government and Society, The Academic College of Tel-Aviv - Yaffo, Israel.
4. Jayoung Che, Academic Member, ATINER & Associate Professor, Busan University of Foreign Studies, South Korea.
5. Ronald Griffin, Academic Member, ATINER & Professor, Florida A&M University, USA.
6. Claudia Ribeiro Pereira Nunes, Academic Member, ATINER & Deputy Coordinator on Degree Program, Veiga de Almeida University, Brazil.
7. Natasa Tomic-Petrovic, Academic Member, ATINER & Associate Professor, University of Belgrade, Serbia.
8. Mihaela Tofan, Associate Professor, Alexandru Ioan Cuza University of Iasi, Romania.
9. Thomas Corbin, Assistant Professor, American University in Dubai, UAE.
10. Rolien Roos, Academic Member, ATINER & Senior Lecturer, North-West University, South Africa.
11. Lavinia Olivia Iancu, Academic Member, ATINER & Lecturer, Tibiscus University of Timișoara, Romania.
12. Thomas Hickie, Academic Member, ATINER & Visiting and Teaching Fellow, University of New South Wales, Australia.
13. Anna Chronopoulou, Academic Member, ATINER & Senior Lecturer, Birkbeck, UK.
14. Maria Luisa Chiarella, Academic Member, ATINER & Senior Lecturer, Centro di Ricerca "Rapporti privatistici della P.A.", Magna Graecia University, Italy.
15. Vassilis Skianis, Research Fellow, ATINER.
16. Olga Gkounta, Researcher, ATINER.
17. Hannah Howard, Research Assistant, ATINER.

FINAL CONFERENCE PROGRAM
14th Annual International Conference on Law,
10-13 July 2017, Athens, Greece

PROGRAM

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

C O N F E R E N C E P R O G R A M

Monday 10 July 2017

08:00-09:00 Registration and Refreshments

09:00-09:30 (Room B-10th Floor) Welcome and Opening Address

Gregory T. Papanikos, President, ATINER.

09:30-11:00 Session I (Room A-10th Floor): Commercial and Corporate Law I

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

1. Maleka Femida Cassim, Associate Professor, University of Pretoria, South Africa. The Authority of Company Representatives Revisited.
2. Mutasim Alqudah, Assistant Professor, United Arab Emirates University, UAE. Control on Corporate Directorship under UAE Law: Balancing Shareholders and Stakeholders Interests.
3. Thomas Corbin, Assistant Professor, American University in Dubai, UAE. Changing the Rules for Receivers and Stockholders in Quasi-Derivative Actions Case Study: Coppola v. Manning.
4. Elfriede Sangkuhl, Senior Lecturer, Western Sydney University, Australia. Charities: The Third Sector or a Distortion of Democracy?
5. Georgios Zouridakis, Alumni, University of Essex, UK. Parallel Lives: The (Legal) Transplant of German AktG 1937 sections 122-123 (AktG 1965 section 147) to Greek Law 2190/1920.

11:00-12:30 Session II (Room A-10th Floor): Civil Rights, Torts, Patents, Cooperation and Sustainability

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

1. Ronald Griffin, Professor, Florida A&M University, USA. The Death of Marriage and the Emergence of the Single Woman.
2. Efthimios Parasidis, Associate Professor, The Ohio State University, USA. Vaccine Mandates and Compensation for Vaccine-Related Injuries in the United States.
3. Molly Townes O'Brien, Associate Professor, Australian National University, Australia & Charles Lineweaver, Senior Fellow, Australian National University, Australia. Achieving the Sustainable Development Goals: Promoting Cooperation and Sustainability.
4. Pedro Diaz Peralta, Researcher, Universidad Complutense de Madrid, Spain and Veiga de Almeida University, Brazil, Claudia Ribeiro Pereira Nunes, Professor, Veiga de Almeida University, Brazil & Fernando González Botija, Professor, Universidad Complutense de Madrid, Spain. Patents on Pharmaceutical Active Ingredients and other Active Substances from Plants and the Value of Indigenous Knowledge on Xxi Century in the Light of Nagoya Protocol to CBD and the WTO-Trips Framework Patent Related-Challenges Case Studies.

12:30-14:00 Session III (Room A-10th Floor): Labour Law, International Law, Nature Resources

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

1. Ravindra Pratap, Associate Professor, South Asian University, India. Building Peace over Water in South Asia: The Potential of the UN Watercourses Convention for a Sustainable Resolution and Prevention of Water Sharing Problems in the SAARC Region.
2. Jorge Emilio Nunez, Senior Lecturer, Manchester Metropolitan University, UK. Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue.
3. Rolien Roos, Senior Lecturer, North-West University, South Africa. State Liability in South Africa: When and How Should the State's Resources, Play a Role?

14:00-15:00 Lunch

15:00-16:30 Session IV (Room A-10th Floor): A Panel on Implementing Human Rights

Chair: Rolien Roos, Senior Lecturer, North-West University, South Africa.

1. Jeffrey Brauch, Professor, Regent University, USA. The Human Rights Movement and the Confrontation of Evil: A Look Inward as Well as Out.
2. Assaf Meydani, Professor and Dean, The School of Government and Society, The Academic College of Tel-Aviv - Yaffo, Israel. Gender Segregation on Orthodox Buses - A Time Considerations Perspective. The Case of the Israeli High Court of Justice Ruling on the "Segregation Lines" 2011.
3. Michael Longo, Associate Professor, Victoria University, Australia. How will 'Brexit' Affect Fundamental Rights?: Domestic and International Perspectives.
4. Danai Delipetrou, Researcher, University of Valencia, Spain & Angeles Solanes Corella, Professor, University of Valencia, Spain. Reexamining the Common European Asylum System: With a Critical Eye Towards the Case of Greece.

16:30-18:00 Session V (Room A-10th Floor): A Symposium on Teaching Law in a Global Society I

Chair: Assaf Meydani, Professor and Dean, The School of Government and Society, The Academic College of Tel-Aviv - Yaffo, Israel.

1. Claudia Ribeiro Pereira Nunes, Deputy Coordinator on Degree Program, Veiga de Almeida University, Brazil. Teaching Techniques or Dynamics Called "Student Competitive Investigation" and "Legal Newsletter Economic" as Motivational Complementary Activities to Fundamental Right Training Axis Studies in Law Course in Latin America.
2. Sophie Karanicolas, Associate Professor, University of Adelaide, Australia, Paraskevi Kontoleon, Solicitor/Lecturer, University of South Australia, Australia & Peter MacFarlane, Associate Professor, University of South Australia, Australia. The Challenges and Pedagogical Benefits of Flipped Classrooms for the Teaching of Law.
3. Lavinia Olivia Iancu, Lecturer, Tibiscus University of Timișoara, Romania. Impact of the Binominal Computer-Internet on Teaching Law in Romania.
4. Fabiana Franco, Professor, Estácio and Emescam, Brazil, Sátina Priscila Marcondes Pimenta Mello, Estácio and Emescam, Brazil & Rodrigo Mello de Moraes Pimenta, Estácio and Emescam, Brazil. Conceptions Transformations of Law Student after Action Research on Criminology.

21:00-23:00 The Pragmatic Symposium of the Conference as Organized in Ancient Athens with Dialogues, Food, Wine, Music and Dancing but fine tuned to Synchronous Ethics

Tuesday 11 July 2017

07:30-10:30 Session VI: An Educational Urban Walk in Modern and Ancient Athens

Chair: Gregory Katsas, Vice President of Academic Affairs, ATINER & Associate Professor, The American College of Greece-Deree College, Greece.

Group Discussion on Ancient and Modern Athens.

Visit to the Most Important Historical and Cultural Monuments of the City (be prepared to walk and talk as in the ancient peripatetic school of Aristotle)

11:00-12:30 Session VII (Room A-10th Floor): Commercial and Corporate Law II

Chair: Claudia Ribeiro Pereira Nunes, Deputy Coordinator on Degree Program, Veiga de Almeida University, Brazil.

1. Mihaela Tofan, Associate Professor, Alexandru Ioan Cuza University of Iasi, Romania. The Impact of the Wage Regulation on the Public Budget. European Good Practices and Traditional Landmarks in Romanian Law.
2. Saloni Khanderia, Assistant Professor and Assistant Dean of Academic Affairs, Jindal Global Law School, India. The World Trade Organization's Trade Facilitation Agreement and India.
3. Rehana Cassim, Senior Lecturer, University of South Africa, South Africa. Judicial Removal of Directors: Does the South African Companies Act 71 of 2008 go too far?
4. Maria Luisa Chiarella, Senior Lecturer, Centro di Ricerca "Rapporti privatistici della P.A.", Magna Graecia University, Italy. Legitimate Expectation and Good Faith in Public Contracts.
5. Adriana Nogueira Torres, Tax Attorney / Researcher, FGV, Brazil & Anna Chronopoulou, Senior Lecturer, Birkbeck, UK. Taxing Consumption in Brazil: Gendered Aspects.

12:30-14:00 Session VIII (Room A-10th Floor): Civil Rights, Criminal Procedure and Human Dignity

Chair: Mihaela Tofan, Associate Professor, Alexandru Ioan Cuza University of Iasi, Romania.

1. Cheong-Hak Choi, Professor, Korea National Open University, South Korea. Electronic Surveillance Law of Korea: Some Questions of Unconstitutionality.
2. Jayoung Che, Associate Professor, Busan University of Foreign Studies, South Korea. Unconstitutionality of Korean Constitutional Court Law Article 68 (1) in excluding from Constitutional Petition the Judiciary Judgement as well as the Court's Verdict on Non-Prosecution.
3. Natasa Tomic-Petrovic, Associate Professor, University of Belgrade, Serbia. Right to Privacy and Its Protection in the Republic of Serbia.
4. Sarisa Van Niekerk, Master of Laws (Procedural Law) Student and Candidate Attorney, University of Pretoria, South Africa. Legal Representation of Children in Criminal Matters: Does the Child Justice Act 75 of 2008 Provide Adequate Protection?

14:00-15:00 Lunch

15:00-16:30 Session IX (Room A-10th Floor): Consumer's Rights, Ambush Marketing

Chair: Thomas Hickie, Visiting and Teaching Fellow, University of New South Wales, Australia.

1. Michel Marlize Koekemoer, Senior Lecturer, University of South Africa, South Africa. Consumer Credit Dispute Forums in South Africa: A Literature Review.
2. Anna Chronopoulou, Senior Lecturer, Birkbeck, UK. Deconstructing and Redefining the Origins of Equity and Trust through English Popular Culture.

16:30-18:00 Session X (Room A-10th Floor): A Symposium on Teaching Law in a Global Society II

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

1. Kyong-Son Kang, Professor, Korea National Open University, South Korea. Honesty, Constitutional Foundation -Focusing on Gandhi's Case. (LAWTCH)
2. Paolo Moro, Professor, University of Padova, Italy. Digital Rhetoric and Legal Methodology in the Age of Infosourcing. The Interactive Platform Collect IUS. (Tuesday)
3. Thomas Hickie, Visiting and Teaching Fellow, University of New South Wales, Australia & David Holmes, Lecturer, University of New South Wales, Australia. *Coitus Interruptus*, the Rhythm Method and Socrates' Symposia in the Twenty-First Century.

18:00-18:20 Closing Remarks

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

21:00- 22:30 Dinner

Wednesday 12 July 2017
Educational Island Tour or Mycenae and Epidaurus Visit

Thursday 13 July 2017
Delphi Visit

Mutasim Alqudah

Professor, United Arab Emirates University, UAE

Control on Corporate Directorship under UAE Law: Balancing Shareholders and Stakeholders Interests

“Over the last couple of years, United Arab Emirates has undergone a revision of its company’s legal framework. The impetus for this movement was to facilitate investment and at the same time to embrace modern international practice of corporate governance. Both objectives are very important. However, achieving them together requires equilibrium, especially with regard to the degree of control imposed on the company’s directors. This article investigates whether UAE corporate legal framework has created a good balance between investors’ protection and stakeholders’ protection. Some recommendations are then advanced to increase the effectiveness of the regime in achieving the required level of equipoise between the interests of the two groups.

Jeffrey Brauch

Professor, Regent University, USA

The Human Rights Movement and the Confrontation of Evil: A Look Inward as Well as Out

The modern human rights movement began as a means to identify and confront evil in our world - things like genocide, human trafficking, and racial discrimination. In the past 70 years, the movement has achieved some important successes. Many grave human rights challenges remain, however. In particular, while the human rights movement has successfully articulated fundamental human rights, it struggles mightily to enforce those rights.

The paper argues that, in order to more effectively enforce fundamental rights, the human rights movement must confront not only the evil perpetrated by offenders, but the forces of evil that arise in ourselves and our institutions. In particular, the paper urges that the human rights movement embrace two things: 1) accountability in our institutions and 2) humility in our aims.

We need greater accountability in our human rights institutions because even well motivated individuals and groups can fall prey to corruption, self-dealing, and the squandering of resources. The paper examines the Human Rights Council and other institutions where these dangers have been realized. And it urges that all institutions - including human rights institutions - work within clear governing structures. No authority should be given without transparency and accountability.

We also need humility in our aims. Human rights advocates and institutions often fall victim to a utopian tendency to press for an ever increasing - and debatable - set of "human rights." Unfortunately, this effort can diminish respect for core human rights and divert attention away from actual rights enforcement. The paper instead urges the movement to focus its attention on promoting the rule of law. The most important thing we can do is to ensure that the citizens of our nations experience real, on the ground enforcement of law and core human rights.

Maleka Femida Cassim

Associate Professor, University of Pretoria, South Africa

The Authority of Company Representatives Revisited

A company, being an artificial or legal person, can do no act of its own. It can act only through the medium of its board of directors, officers and agents who themselves have authority to represent it. Consequently the principles of agency law are of particular importance to Company Law. It has become necessary to re-examine the issue of authority and representation in the sphere of Company Law in South Africa, as a result of the recent and highly publicised judgment of the Constitutional Court (the highest court in South Africa) in *Makate v Vodacom (Pty) Limited* and consequent to the enactment of the new Companies Act 71 of 2008. This paper discusses the authority of, and representation, by directors and other agents who enter into contracts on behalf of companies with third parties.

Specific focus is placed in this paper on the burning question of the juristic nature of apparent authority, that is, the authority of an agent as it appears to others. In the field of Company Law, the common law principles of apparent authority have traditionally been designed to protect bona fide third parties contracting with companies. The courts must continue to cultivate and maintain the careful balance which this doctrine has sought to achieve between the interests of bona fide third parties dealing with a company, and the interests of the company itself and its directors and shareholders. The two divergent schools of thought on the controversial issue of whether it is possible to follow English law and establish a chain of apparent authority are also discussed in this paper.

Reference is made to legal principles in the common law jurisdictions, particularly English law, on which South African company law is based.

Rehana Cassim

Senior Lecturer, University of South Africa, South Africa

Judicial Removal of Directors: Does the South African Companies Act 71 of 2008 go too far?

An innovative provision of the South African Companies Act 71 of 2008 is that, for the first time in South African law, provision is made for a court to declare a director delinquent. The effect of a declaration of delinquency is that a director is judicially removed from office and is disqualified, for so long as the declaration of delinquency remains in force, from being a director of a company. Section 162 of the Companies Act 71 of 2008 is said to be directed at protecting companies and corporate stakeholders against company directors who have proven themselves unable to manage the business of the company or who have neglected their duties and obligations as company directors. The United Kingdom (UK), Australia and the United States of America (USA) also permit courts to disqualify and remove directors from office on specified grounds. This paper argues that section 162 of the Companies Act 71 of 2008 is much stricter and far-reaching than the equivalent provisions in these leading jurisdictions. It contends further that section 162 of the Companies Act 71 of 2008 does not contain sufficient safeguards to protect against vexatious and frivolous applications being made to court to declare directors delinquent and remove them from office. With a view to illustrating the broad scope of section 162 of the Companies Act 71 of 2008 and the potential for abuse of this provision, this paper examines the recent high-profile case of *Lewis Group Limited v Woollam* 2016 JDR 1861 (WCC). This matter involved an application by a single shareholder to the High Court to declare delinquent four directors of Lewis Group Limited, a public company listed on the Johannesburg Stock Exchange and the holding company of Lewis Stores (Pty) Ltd, which operates over 700 retail outlets in South Africa. Drawing on the relevant equivalent legislation in the UK, Australia and the USA, this paper makes some suggestions to enhance the South African statutory provisions to judicially remove a director from office.

Jayoung Che

Associate Professor, Busan University of Foreign Studies, South Korea

**Unconstitutionality of Korean Constitutional Court Law
Article 68 (1) in excluding from Constitutional Petition the
Judiciary Judgment as well as the Court's Verdict on Non-
Prosecution**

The S. Korean (Republic of Korea) government party was replaced by recent referendum on May 17, 2017. The former president of the regime has been impeached for alleged bribery and is currently in detention and under trial. The new government has proclaimed an anti-corruption drive, and one of priorities concerns the reformation of the Prosecution Office. At the moment the Prosecution possesses so much authority, appropriating both the initiative of criminal investigation and monopoly of prosecution, as to utilize their power improperly like an organized corporation and potentially be apt to corruption under the influences of external power. There is no similar example in the world like the Korean prosecutors, who maintain despotic authority, appropriating entirely the initiative of prosecution, while they actually investigate no more than two percent of criminal cases.

In order to limit the current absolute authority of the Prosecution, there is a process of discussion to remove from them the formal initiative of investigation, most of which work however is actually done by the police. And there is also an intention to put a curb on their monopoly of prosecution by introducing prosecution by jury as a supplementary device.¹

It should be noted, however, that similar abuse of power exists not only in the Prosecution but also in the Judiciary. It is true that Korean judges who are not elected by the people take charge of enormous authority without reserve but there is no overseeing office to check against it. Even the Constitutional Court Law [Article 68 (1) of the Law], as well as the National Human Rights Commission Law [Article 30 (1) (1)], excludes from deliberation cases which have completed the judicial process. It is evident that such a system which has no restraint against potentially unjust trial by the courts naturally results in the abuse of power by judicial authorities. Constitutional petitions had been presented a few times against potential unconstitutionality of the

¹ <http://v.media.daum.net/v/20170630144805251?d=y>.

Constitutional Court Law, Article 68 (1), but every time the Constitutional Court vindicated it as constitutional.²

The Korean Constitutional Court was established in 1988 on the model of the German Constitutional Court, but in reality there is a great difference between them. It is said that more than 95% of the affairs of the Constitutional Court of Germany are occupied with constitutional petitions, most of which are the cases that have been put on trial, so as to appraise the justness of the judgments of the trials. However, the Korean Constitutional Court absolutely evades matching the authority of the court.

Furthermore, the Korean Constitutional Court excludes from constitutional petition cases which have gotten past the petition of verdict of the court on the disposal of non-prosecution disposed by prosecutors, regarding it as having completed the process of trial. However, trial has to refer to the procedure of arguments between the plaintiff or prosecutor and the defendant which are to be developed after indictment, which differs from the verdict of the court to examine the pertinence of the prosecutor's disposal of non-prosecution, as the latter does not refer to the original suit. Identifying the verdict of the court at the prosecutor's disposal as the procedure of trial is preposterous and illogical.

This kind of antinomy of the practice of the Constitutional Court Law is verified in their verdicts themselves. For example, a case that has not been subjected for the verdict of the court on non-prosecution disposal, when submitted to the Constitutional Court is rejected on the grounds that it has not gone through all the procedures prescribed by the law, as constitutional petition is a supplementary process available as a last remedy. However, when it was again submitted to the Constitutional Court after completing the procedure of the court for verdict, the case was also rejected from the Constitutional Court on the excuse that it had completed the procedure of trial and the case having been tried is prohibited from the constitutional petition on the basis of the Constitutional Court Law, Article 68 (1)

Thus, the present operation of the Korean Constitutional Court results in not only the potential unjustness of judgments of the court but also the abuse of power by the Prosecution. This paper is to review the institutional deficiency of Korea to put a curb effectively on the abuse of power by the judicial as well as police-prosecution

² For the constitutional petitions against unconstitutionality of the Constitutional Court Law, Article 68 (1), cf. 96 Heon-ma 172 (1997.12.24.); 2011 Heon-ma 194 (2012.12.21.); 2012 Heon-ma 641 (2014.6.16.); for the constitutional petition of unconstitutionality of the NHRC Law, Article 30 (1)(1) [with Article 32 (1)(4) & 32(4)], cf. 2002 Heon-ma 302 (2004.8.26).

administration, and one of the main causes is to be found in the Constitutional Court Law and its practice itself which tended to be a hotbed to promote this corruption. It is reflected in the statistics of the OECD, according to which the Republic of Korea falls into the last two or three in terms of people's credibility both regarding the police³ and the judiciary⁴ among the 40 or so OECD countries.

³http://search.daum.net/search?w=tot&DA=YZR&t__nil_searchbox=btn&sug=&sugo=&q=%ED%95%9C%EA%B5%AD%EC%9D%B8+%EA%B2%BD%EC%B0%B0+%EC%8B%A0%EB%A2%B0%EB%8F%84%2C+OECD%EA%B5%AD%EA%B0%80%EC%A4%91+%EC%B5%9C%EC%A0%80%EC%88%98%EC%A4%80.

⁴ <http://v.media.daum.net/v/20150809153605375>.

Maria Luisa Chiarella

Senior Lecturer, Centro di Ricerca "Rapporti privatistici della P.A.",
Magna Graecia University, Italy

Legitimate Expectation and Good Faith in Public Contracts

I will try to examine the dealing of public powers in public contracts, in the light of the contractual asymmetry profiles that characterize commercial transactions between private and P.A. (public authorities). Private parties and public powers are in unequal contractual relation; indeed, the (formal and substantive) awe of enterprise, in the system of public contracts, is sufficiently clear if we consider (for example) the fact that the private party, within the terms of the law, is bound by the tender, without being able to withdraw the contractual proposal; and also the fact that the same is also unilaterally bound by the contract entered into, until the approval of the same (art. 32, Legislative Decree no. 50/2016, *Codice degli Appalti*). In this reasoning, the public evidence procedure can not be reconstructed in terms of negotiating parity (i.e., between equal subjects), being managed mainly by public powers or *jure imperii*. For this reason, it is required, to investigate which tools may guarantee the company in terms of "awe" and (simultaneously) the proper functioning of the internal market.

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Electronic Surveillance Law of Korea: Some Questions of Unconstitutionality

In April 2007, the “Electronic Surveillance Law” was issued in Korea. It prescribed that some sexual criminals could be monitored electronically. I have had some doubts about the constitutionality of this law, because an additional electronic surveillance with a punishment for ‘one’ crime can be against the ‘Prohibition of Double Jeopardy.’ Also, it may impair the privacy of the criminals who have already taken their punishment.

In April 2010, this law was revised. This revision, however, made the doubt bigger, because it made the requirements for the request of the Court’s Order weaker and broader and the period of surveillance longer. Moreover, it added other crimes for the surveillance and even made the law retroactive in that it is effective to any criminal who is in the mid of the sentence and within 3 years after the termination of the sentence.

Therefore, there are three points to be judged with the constitutionality of this law. The first is Double Jeopardy. If we see the electronic surveillance as one of a punishment, the law is unconstitutional. Thus, I will try to prove that the surveillance has some characteristics of a punishment. The second is proportionality. Because the period of surveillance is too long and the precondition of the Court’s Order is too easy, this law might be against the proportionality. Furthermore, basically the electronic surveillance can impair the privacy of the criminals. So, it is unconstitutional if the loss of the private rights is larger than the probability of the prevention of the repetition of the crime. The third is retroactivity. Retroactivity is strictly prohibited in the Constitution. It is still the case even if the electronic surveillance is not a punishment but a treatment for social security. Because it has some similarity with the punishment as it restricts ‘the freedom of movement.’ Moreover, the law can apply to a criminal who already got his(her) sentence before this revision. This is certainly unacceptable constitutionally, because even the retroactivity of the social security treatment is effective only to the time of the trial

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Deconstructing and Redefining the Origins of Equity and Trust through English Popular Culture

Traditional accounts of Equity and Trusts have always examined its origins as a unique characteristic of Common Law. One of the most common approaches to the study of the origins of Equity and Trusts examines their philosophical background. Another approach to investigating the origins of Equity and Trusts refers to an exhaustive case-by-case study.

This paper brings forward an alternative approach to the study of the origins of Equity and Trusts. It seeks to deconstruct traditional readings on the origins of Equity and Trusts. It also aims to generate a new approach to the examination of the origins of Equity and Trusts, deeply embedded in the English Pop Culture. From this perspective this article redefines Equity and Trusts through a reading of English Pop Culture.

Thomas Corbin

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Changing the Rules for Receivers and Stockholders in Quasi-Derivative Actions Case Study: Coppola v. Manning

Traditionally, only shareholders of a corporation have been able to file “derivative” style actions against current and former board members for breach of fiduciary duties. However, a new Michigan Court of Appeals case, *Coppola v. Manning*, 2015 Mich App LEXIS 2152 (November 17, 2015), indicates that for at least the parties in that case, a court-stipulated receiver reviewing the corporate books for an entity in financial trouble, may now have similar rights and responsibilities to sue current and former agents of a corporation for breaches of fiduciary conduct. Because this case is an unpublished court case, it does not have as of yet binding precedent. However, any financial institution with knowledge of this case would be inclined to encourage a stipulated agreement with a debt-ridden corporations outlining similar powers for a receiver. Additionally, any attorney counseling a corporation or business in financial trouble now needs to take care to counsel their clients into the implications of agreeing to the stipulated powers of a receiver. Furthermore, this case should also act as a guide for the counseling of clients during the incorporation stage to take care in making decisions and documenting them in such a manner that would not avail themselves to easy second guessing of decision by outside reviewers of financial decisions. The point of this paper is to review the implications of *Coppola v. Manning* to current Michigan Law and what may be of concern to other jurisdictions. It should also to suggest client counseling steps for attorneys dealing with clients that may be having financial trouble and the drafting of stipulating agreements with opposing counsels.

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&

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Reexamining the Common European Asylum System: With a Critical Eye Towards the Case of Greece

The right to asylum, as back as the term goes historically and as much as it has been discussed, is usually not recognized or granted, above all due to the lack of a common European asylum policy and a consensus regarding solidarity and equality, among more values. Therefore, a systematic approximation, rather than the common one of a supposed crisis, is required. The Common European Asylum System (CEAS) was the outcome of a series of collapses of the methods followed and initiatives taken by the European Union towards its creation. The Regulation No 343/2003, known as “Dublin II”, apart from being a negative reference on asylum policies all around the European Union, marked the transition from the CEAS’ first phase to the second one. Greece is used as the central example of the Dublin System’s shortcomings, principally -but not exclusively- through the case of *M.S.S. versus Belgium and Greece*. The latter consists of the judgement that most clearly illustrates the part of national legislature, reception and hosting conditions and compliance of the norms. In addition, it is another clear indication that the Dublin System does not guarantee the persons’ safety, but at times it even puts refugees’ lives in further risk. The delay of the national services, the insufficient responses when in contact with the European Institutions and the horrendous conditions under which the State receives and hosts refugees, schematize its definition as an “unsafe State”. This study also examines the relationship between the current arrivals of persons within the Greek territory and the -political, rather than legal-agreement between the European Union and Turkey. Overall, it is demonstrated, through a critical analysis, that human rights are and should be the response to the refugees’ situation within Europe.

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&

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**Patents on Pharmaceutical Active Ingredients and other
Active Substances from Plants and the Value of Indigenous
Knowledge on Xxi Century in the Light of Nagoya Protocol
to CBD and the WTO-Trips Framework Patent Related-
Challenges Case Studies**

The application of CBD and in particular its Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, in respect to the protection of Traditional Knowledge (TK) in Brazil and other countries is challenged by different constraints concerning the fair BIOPROSPECTION of resources.

Among them, the economic global crisis in recent years has limited the availability of institutional resources to cope with the general goals of protect the natural heritage and promote its profitable use, in spite that, concerning general patentability of living organisms and also biotechnology patents, the EU has endorse the Nagoya Protocol, by Council Decision 2014/283 / EC of 14 April 2014 and R 511/2014 of 16 April 14 with aims of safeguarding of the legitimate rights of traditional societies of origin through the obligation to guarantee Its fair use, as evidenced by internationally recognized certificates of conformity or reliable evidence to ensure compliance with the rights and obligations under the Protocol.

In this context, some foreign companies have patented active substances and extracts of a plant grown in natural forests (in particular the Brazilian Amazon Rain Florest) that has long been used by indigenous people and have been launching abroad to reach new markets. It justifies the interesting of to understanding the legal analysis with a case study because International Law does not yet recognize the value of indigenous knowledge, so there is no legally to the patents.

The WTO (World Trade Organization) provides a legal forum for challenging trade issues, through the TRIPS mechanisms but so far, the

WTO is clearly on the side of the patent-holders. The authors analyses several case-study, namely Maca, Turmeric and Stevia as the internationalization hypothesis as a case study. The general aim of the study has two sides: (i) the economic analysis with the framing of the model within the major economic theories; and (ii) the legal analysis indicating the corporate expedients to deposit the patent under analysis.

The methodology is case study and the method is bibliographic review of the important literature of this theme, the secondary data from Brazilian, UE and foreign official websites – case study. This study is a work from Research Project: Economic development, globalization and sustainability.

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&

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Conceptions Transformations of Law Student after Action Research on Criminology

It is understood that the practice of involvement of students in research, mainly on action research, contributes to more critical and reflective pedagogical field. The article presents, through the methodology of the analysis of discourse, the prospect of 18 students about themselves, about each other and about the concepts of dignity, democracy and governability. The data collection took place in the form of manuscript reporting after the student participation in questionnaires to 120 juvenile delinquents about the concept of criminality. Participants reported the experience of having interviewed juvenile delinquents.

By analyzing the manuscripts produced and transcribed soon after application of the questionnaire, we noticed a change in the design and of the values pre-set in the subject through the practical experience that leads to a differentiated understanding about the life of the minor offender and himself. After all, as discussing the legal device without the knowledge of the reality of "subject-object"?

It is possible to see through the figures of speech the intertextualidades, intentionality and subjectivities that delineate the unsaid, identifying the existence of inseparability between the teaching-learning-research, being the same tool that serves as a sine qua non for the paradigm shift of subject empowering itself the process of cognition.

There is need for investment and recognition in the pedagogical field of higher education about this indissociabilidade since it is possible to identify a better visualization of the systematic content compulsory in the classroom, forming professionals concerned with the social contexts in which they find themselves.

Action research, especially that with overlapping policy mode limiting aspects of academia, because, when the teacher works to change or to circumvent the limitations on what it can do, it usually is

the result of a change in your way of thinking about the last value and policy limitations.

Ronald Griffin

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The Death of Marriage and the Emergence of the Single Woman

“You have to look at your surroundings and take stock of yourself. As a woman I can see things and I can write about them. But I can’t capture with crystal clear clarity the words I want to use to proclaim myself. To the world I want to say the following. I want to be free. Self expression is my business. I am a fighter and a free spirit. I want people to leave me alone. As women it comes down to money and power. You need both to be a free and independent human being. I want to *be...full stop...and contract with whom I please*. I want all the privileges, prerogatives, social spaces, and luxuries afforded men. Equality is not the only quest in my life. It is a way station on a longer road to secure something more glorious and gratifying. Being a human being!” This sassy and bold declaration (feminist in tone) forewarns everybody, indeed, foreshadows a society that is morphing. For some women living alone is alright. For others romance has supplanted marriage. For a few, perhaps, more than a few, cohabitation is a suitable substitute. This essay assays these claims; uses plays a trope for reviewing some things; revisits historical details tied to traditional marriage; probes the arguments for and against traditional marriage; looks at the debris left behind by failed marriages; explores cohabitation and same sex relationships; reports on man-made contrivances scooping up the debris left behind by failed marriages; exploring at the end the plight of some women living abroad.

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&

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***Coitus Interruptus, the Rhythm Method and Socrates'*
*Symposia in the Twenty-First Century***

Coitus interruptus is generally regarded as a 'hit and miss' method of birth control. This can be said, too, of the rhythm method. Both rely upon timing and much faith. Arguably, current pedagogical practices in Australian law schools are blindly embracing technology with little question and/or retreating to old models of assessment. Into this mad mix (much like Medusa's snake-cursed head) some staunchly defend the Socratic method as an article of faith - even though this has been used as a vehicle, by some students and lecturers, as a precept for bullying. Surely there is another way. This paper will discuss assessment and pedagogical practices used by the two authors in their 'Sport and the Law' course at the University of New South Wales in Sydney, Australia. Despite the course having received the Vice-Chancellor's teaching award and numerous unsolicited testimonials from former students, the authors see dark storms brewing on the horizon. There is mounting pressure in laws schools for academics to embrace quick and cheap assessment solutions such as multiple-choice online quizzes and pre-1970s closed-book exams, rather than embracing a proper understanding (and delivery) of Socrates' symposia.

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Impact of the Binominal Computer-Internet on Teaching Law in Romania

Until 1989 Romania lived in the fumes of communism, where any idea, poem or song mentioning some novelty coming from Western Europe was censored and its author thrown in jail.

The Revolution of 1989 in Romania brought Romanians democracy, freedom, but also access to higher education. The development of the market economy compelled the universities to react to the market demands so as to offer valuable creative human resources with a decisive role in the labor process. Anticipating the labor market demands has become difficult within a framework where the economic, legislative and political factors often influence society. Within the last 10 years technology has become ever more present in all the fields, educational institutions shyly providing computer-aided training, IT basic education and Internet use. The law field was traditionally associated with the cloud of dust of the books that had to be present in the library of every single legist. Reality though proves that this field was also profoundly affected by the computer-internet binomial. Moreover, law fields such as the insolvency law excessively employ the virtual environment against a background where less than half of the Romanians use the internet. Technological evolution may not be stopped, but the use of the virtual environment by the legislator should be rationed by monitoring the access of the population to virtual information.

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**Honesty, Constitutional Foundation - Focusing on Gandhi's
Case**

Can such virtues and values as truth, honesty, love deserve direct objectives or ideas of law? Current legal theory will reply in the negative. However Gandhi as a lawyer never fails to give priority to truth and honesty over any other in his legal practice and set a good example to realize the unity of politics and ethics, or law and religion.

This paper aims mainly at looking into the legal mind and aspects of Gandhi rather than his legal philosophy or legal thought. The introduction of constitutional viewpoint is essential to bridge the gap between the ordinary legal practice and the higher philosophy of law. Satyagraha, Gandhi's trademark, can be understood as a kind of constitutional movement today. As there was no Constitution with bill of rights when India was ruled by British Empire, a conscientious lawyer like Gandhi could not help expressing his own constitutional voice in many cases. Anti-racial discrimination, act to repeal bad laws, Independence movement under the name of civil disobedience or non-cooperation movement could be named as a constitutional movement.

The greater part of the paper treats the story of Gandhi as a law student and then his activities as a lawyer, especially his characteristic skill to settle the conflicts into peace using alternative disputes resolution methods such as arbitration or mediation. Also he showed a model as a standard in legal ethics by pursuing truth at any case over the interests of his clients. However we have to admit that Gandhi's one way emphasis on truth sometimes conflicts with the rights of defendants according to the today's procedural justice because there was still no universal declaration of human rights at that time.

In conclusion, Gandhi set a model in theory and practice for the unity of truth and honesty as well as love and law. However, it is regrettable that the current situation of the judiciary and the legal scholarship bears witness to the contrary. Fortunately, nowadays advanced legal doctrine and theory goes to some degree parallel with Gandhi's dream. But we legal students are expected to realize the great proposition Gandhi firmly asserted although that seems far, far away from us.

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&

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The Challenges and Pedagogical Benefits of Flipped Classrooms for the Teaching of Law

Educators are continually striving to develop better ways of learning and teaching for their students. At the forefront of educational literature is the idea that students learn better when they are prepared for class. Preparing for class encourages student engagement and allows for active learning to take place, replacing the need for didactic, lengthy and onerous lectures and allowing more time to apply knowledge in class with the assistance of the educator. This is the core philosophy behind the flipped classroom pedagogy. However, one of the biggest challenges for educators in law, is the ability to develop course material that adequately covers the course content without placing onerous burdens on students to devote hours of preparation to pre-class activities. Why is this such a challenge for educators in law?

First, the problem lies with the culture of teaching and learning the law. Traditionally, legal educators have expected students to devote hours of pre-class time to reading materials and listening to lectures that can be up to 3 hours long. The need for such onerous pre-class preparation is premised on the assumption that students need to know all this information before class in order to successfully complete a course. The second problem lies with the attitude of law students who have been led to believe that the best way to learn, is to ensure they complete hours of pre-class preparation. Evidence from a national learning and teaching flipped classroom project, shows that most students cannot complete all their pre-class activities when they involve hours of pre-reading and preparation. Motivating students to complete this level of pre-class preparation is unrealistic and burdensome.

This paper considers how the flipped learning pedagogy can be successful in overcoming these barriers to learning. It specifically considers how a law course with well-developed pre-class, in-class and post-class activities (including the monitoring of completion of pre-class activities) is an effective learning strategy that leads to better student engagement and course outcomes.

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**The World Trade Organization's Trade Facilitation
Agreement and India**

Disciplines pertaining to trade facilitation have assumed a new momentum with the recent proliferation of Global Value Chains (GVC's), which has increased trade in value-added and in turn necessitated effective rules and regulations to *inter alia*, streamline customs-related procedures and reduce transactional costs in doing business. In the context of the World Trade Organization (WTO), the Agreement on Trade Facilitation (TFA) formed a part of the ninth Ministerial Conference held in Bali in December 2013, the negotiation of which marked an important milestone given the fiasco that surrounded the Doha Development Agenda (DDA) that many thought was long dead. The TFA is inserted in Annex 1A of the WTO Agreement ("the Protocol") and is intended to come into effect once it has been accepted by two-thirds of the Members of the WTO. Accordingly, it is currently open for accession and requests Members to notify the commitments by means of "Category - A obligations" that they would in a position to implement at the domestic level before the coming into force of the Agreement. Its mandate includes the facilitation of transit between nations by easing out customs-related procedures, and therefore promises tangible outcomes insofar as the acceptance of its Protocol of Amendment would ease customs related rules and procedures, and bring the domestic laws of its Members in this regard, in line with internationally recognised standards.

With the submission of its Category-A notifications to the WTO's Preparatory Committee on Trade Facilitation on 18 March 2016, India became the 76th Member to accept the TFA. This factor underscores the country's seriousness as regards its commitment to enforce the underlying obligations under the TFA. However, at the same time, and as demonstrated by an OECD research, reforms pertaining to customs modernization have been rather lopsided in India. As a result, even whilst India has been performing at par with the rest of the world in terms of implementing some of the trade facilitation measures, customs modernization in remaining indicators in this regard, has been rather dismal.

This paper accordingly analyses the recent submission of India's Category - A notification in its endeavor to become a Member of the

TFA, and identifies the gaps that may plausibly exist in certain aspects as regards the Indian customs' environment *vis-à-vis* the WTO's TFA.

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Consumer Credit Dispute Forums in South Africa: A Literature Review

South African consumers are finding it more difficult to service their debt. This will result in more consumers having to enter into disputes regarding credit matters. The purpose of the National Credit Act 34 of 2005 is to protect consumers and provide 'consistent and accessible system' where consumer credit issues can be resolved. A consumer would have to identify the forums which can hear their specific credit dispute. However, the consumer would have to measure the effectiveness of such forums against predetermined criteria. Currently, there are no such criteria developed for the South African credit industry. This study will therefore make a novel contribution by putting forward possible factors which can be used by a consumer when choosing a dispute forum. In developing these factors, guidance was taken from: the EU Consumer ADR Directive; South African legislation and policies; and reports prepared by the stakeholders in the South African credit industry. The factors suggested in this study included: the cost of and time spent dealing with the dispute; the effective functioning of the dispute forum; transparency in the operation of the dispute forum; the relief that a consumer may obtain from the dispute forum; and the overarching factor of user-friendliness of the process. The following dispute forums were measured against the above factors: the National Consumer Tribunal, the National Credit Regulator; the Banking Service Ombudsman; the Credit Ombud; civil courts and debt counsellors. This study found that even though South Africans now have more dispute forums available to them, that this did not always translate into positive outcomes for consumers.

Michael Longo

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How will 'Brexit' Affect Fundamental Rights?: Domestic and International Perspectives

This paper discusses the implications of Brexit for human rights protection within national, regional and international contexts. It considers the *what*, the *how* and the *why* questions to comprehend the legal and non-legal dimensions of the human rights discourse in a post-Brexit UK, before turning to the wider implications of the UK's withdrawal from the EU on the promotion and implementation of human rights around the world. The discussion commences with a review of existing legal arrangements and how Brexit may change those arrangements. It then examines, from interdisciplinary perspectives, the reasons why Britain has taken a predominantly negative view of European frameworks for fundamental rights protection within the narrative of the UK's well-known, but still under-researched, Euroscepticism. Based on prevailing narratives the paper contemplates a 'rights gap', coupled with increased restrictions on migration, as the most likely outcomes of Brexit in this sphere.

The UK has exercised a key role in promoting human rights within the global system. The UK's soft power credentials, underpinned by its cultural diplomacy, political values, reputation and similar resources, are regularly ranked among the highest in the world. Through its membership of the EU, the UK has asserted influence both on the member states of the EU and on other countries. It has positively influenced the implementation of human rights around the world, demonstrating the ability of soft power to attract and co-opt. While this paper concludes that the UK's withdrawal from the EU legal system may lead to a rights legal deficit at home, where access to rights and remedies is diminished with fewer checks or safeguards, it also envisages a shift in soft power on the international stage if the UK makes good on its promise to reduce immigration and retreats from the high standard of rights protection it has come to be known by.

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**Gender Segregation on Orthodox Buses -
A Time Considerations Perspective: The Case of the Israeli
High Court of Justice Ruling on the "Segregation Lines" 2011**

Buses on which Orthodox rules are customary are called "Mehadrin" (Kosher) buses, where men and women are separated. The men sit in the front and the women in the back. Usually, the women enter and exit the bus through the back door; the men, through the front. Additional rules include modest clothing, listening to Hasidic music or none at all. On January 2011, the Supreme Court has established that gender segregation is allowed only if it is carried out willingly. This paper attempts to examine the factors explaining the Mehadrin' buses policy making on public transportation in Israel. The separation on these buses harms the constitutional principles of equality, human honor and dignity and freedom of religion and conscience. This study identifies several variables that explain this decision: Non-governability of the political system and an Israeli political participation characterized by instrumental democratic values, which attempt to create alternative supply of policy decisions. These two variables will serve as the structural factors creating the framework for the actions of several players at the political judicial sphere. The more a society tends to be characterized by non-governability and by instrumental political participation, the more we can expect players to impose short-term instrumental view as a guiding behavior.

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Digital Rhetoric and Legal Methodology in the Age of Infosourcing: The Interactive Platform Collect IUS

This paper proposal is divided in two steps: firstly, I try to explain the foundation of Digital Rhetoric, conceived as the art of argumentation and persuasion of the lawyers in the age of infosourcing and legal bots; secondly, I would like to present the interactive platform CollectIUS, that is a rhetorical software for searching, discussing and collecting law, developed and used by students of University of Padova.

Doubtless, the legal technologies based on intelligent systems are disruptive for many types of legal professions, that must be highly specialized to get over the dominance of the legal bots. First of all, as well as in the fair trial, Digital Rhetoric appears the legal method to search arguments, to discuss hard cases and to collect good reasons in the age of infosourcing. Using the information and communication technologies, the future legal professional will be the data scientist, because a hugely important skill is the ability to take the best data, to be able to understand it, to process it, to extract value from it, to visualize it, to communicate it. In fact, by virtue of intelligent machines, judges, lawyers and legal professionals will have more time to spend on higher value performance and their proficiency will be founded primarily on three competences: the ability of researching sources; the skill of managing discussion of a controversial case; the attitude to building an annotated repository of good arguments.

The interactive platform CollectIUS (www.collect-ius.net) is a model of legal education and professional training, founded on Digital Rhetoric and developed as a social and cooperative network by an innovative project of the students of the Law School of University of Padova. CollectIUS is not only an algorithmic platform with a mechanical intelligence, but it is overall based on the collaboration and the participation of human minds (people first). CollectIUS was born with the purpose of developing, in the form of a pragmatically structured platform, a new and very peculiar point of view on the relationship between legal and computational systems: it is a research platform for legal argumentations; an open and dialectic discussion space; a law discussed-case database shaped in an interactive way.

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Sovereignty Conflicts and International Law and Politics: A Distributive Justice Issue

Most—if not all—conflicts in international relations have—to an extent—something to do with sovereignty. On the theoretical side, we learn at University that either considered as a strong concept or one that has lost relevance, it is still discussed. On the practical side, the prerogatives a State has over its people and territory appear to be the highest. Within these ideal and real backgrounds, there are various sovereignty disputes around the world that struggle between legal and political limbo, *status quo* and continuous tension with various negative consequences for all the involved parties (e.g. violation of human rights, war, arms trafficking, only to name a few). It is increasingly clear that the available remedies have been less than successful, and a peaceful and definitive solution is needed. This article proposes a fair and just way of dealing with certain sovereignty conflicts. The paper considers how distributive justice theories can be in tune with the concept of sovereignty and explores the possibility of a solution for sovereignty conflicts. I argue that the solution can be based on Rawlsian principles.

Efthimios Parasidis

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Vaccine Mandates and Compensation for Vaccine-Related Injuries in the United States

The United States is in the midst of a vaccine crisis. Vaccination rates are falling, concerns of vaccine-hesitant parents are politicized, and public health officials fear widespread outbreaks of vaccine-preventable diseases. While individual states have the legal authority to issue vaccine mandates, the federal government—via the National Childhood Vaccine Injury Act of 1986 (“Vaccine Act”)—maintains responsibility for incentivizing vaccine innovation, ensuring a stable vaccine market, and affording compensation for vaccine-related injuries. Although the Vaccine Act may have been the right cure for the vaccine woes of the 1980s, the act has failed to keep pace with technological advancements and evolving public policy concerns. As was the case during the 1980s, today’s vaccine market is highly consolidated and the public depends on one or two manufacturers for most childhood vaccines—this has led to vaccine shortages and a lack of competition in vaccine design. While the Vaccine Act affords manufacturers broad legal immunities from tort claims, a “regulatory vacuum” has emerged whereby manufacturers are not obligated to incorporate scientific developments into vaccine formulas. Furthermore, the Vaccine Act’s complex compensation mechanism has failed to resolve vaccine-injury claims fairly and expeditiously. Meanwhile, decreasing public trust in government and industry fuels vaccine hesitancy and creates population health challenges for public health officials. Recalibrating vaccination laws is necessary to remedy these imbalances.

Grounded in a comprehensive analysis of the historical context under which the Vaccine Act was enacted, this paper details how statutory levers can address modern-day concerns in vaccine policy and provides draft legislation that furthers the Vaccine Act’s public health, compensation, and market stabilization goals. The proposals focus on increasing vaccine research, adjusting preemption provisions, and expanding the safety net for vaccine-related injuries, and use law as a means of furthering the public health and building public trust in vaccines.

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**Teaching Techniques or Dynamics Called "Student
Competitive Investigation" and "Legal Newsletter
Economic" as Motivational Complementary Activities to
Fundamental Right Training Axis Studies in Law Course in
Latin America**

Higher education has legal rules on the fundamental or humanistic training the student, that were established by Resolution CNE / CES n^o 9 on September 29th, 2004 and their opinions. This axis allows: (i) to integrate students into the humanism field, establishing the relationship of law to other disciplines, and (ii) for teachers education and extension paradigms, so that both in their performances seek the fundamental disciplines better utilization. This research aims to demonstrate that core teachers can accomplish the objectives related to the axis of such training with exercise routines combined with motivational activities. For this display will be diagnosed four private universities in Brazil, including in the sample four of the five regions of the country, who were surveyed from February to June 2017.

Summary: Introduction. 1. Overview of the skills sought and the difficulties encountered in the Fundamental Axis. 2. Theoretical reference of the system of knowledge - difference between the "epistemic" and the "empirical". 3. Pedagogical Guideline of the Law Course - Resolution of the CNE / CES n^o 9 of September 21, 2004, its opinions and its compatibility with motivational techniques or dynamics. 4. Discussion and Results in the use of techniques or motivational teaching dynamics - Diagnosis in four of five Regions of the country, by sampling. Final considerations.

Ravindra Pratap

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**Building Peace over Water in South Asia:
The Potential of the UN Watercourses Convention for a
Sustainable Resolution and Prevention of Water Sharing
Problems in the SAARC Region**

The paper argues for the observance by SAARC countries of the customary international law rules and principles contained in the 1997 UN Watercourses Convention and for establishing a regional cooperative mechanism for water sharing in the SAARC region. The paper is tentatively in three parts. Part one sets out a brief overview of the significance of water sharing in SAARC countries, underscoring an undeniable shortage of water in the SAARC region aggravated by climate change and water wastage coupled with the rising demand for water due mainly to the rising population and the imperatives of development and the potential of water-sharing problems to degenerate into a full-blown crisis between the two nuclear states of India and Pakistan, as shown most recently in the later 2016 by the suspension of regular talks institutionalized under the Indus Waters Treaty, 1960. Part two makes a comparative analysis of the existing disintegrated/river-and-country specific legal regimes of SAARC water sharing and the 1997 UN Watercourses Convention along the major issues and concerns of water sharing between the countries of the SAARC region, highlighting some of the more discernible deficiencies in those regimes and the benefits of adherence to the customary international law rules and principles contained in the Watercourses Convention (such as equity, reasonableness, flexibility, and adaptation) monitored/administered through a regionally-established cooperative mechanism. Part three concludes and makes some specific recommendations.

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**State Liability in South Africa:
When and How Should the State's Resources, Play a Role?**

The law on state liability in South Africa can be described as a field where private and public law intersect, where the codified and uncodified law both play a role and where inherited legal principles from the Roman-Dutch and English law are applied with reference to the supreme *Constitution of the Republic of South Africa, 1996*. It is submitted that the particular field of legal enquiry is characterised by a number of conceptual quandaries due to its complicated nature.

One such question that arises, is whether the state's ability to pay, should play any role during the liability enquiry when the state is faced with a delictual claim (claim in tort) for damages. It is trite law that a private defendant's ability to pay plays no role during the liability enquiry, that should establish whether an unlawful and culpable act or omission was committed that caused the plaintiff damages. However, this is not the case when a plaintiff lodges a claim based on the state's omission to perform a legal duty.

To determine whether a legal duty can be imposed on the state, is not a simple task, as explained by the Constitutional Court in the still authoritative matter of *Steenkamp NO v Provincial Tender Board, Eastern Cape* (2007 3 SA 121 (CC)). Breach of a statutory (or constitutional) duty is not enough to establish (private law) liability – policy considerations of fairness and reasonableness are relevant (par 137) – "[i]n our constitutional dispensation, every failure of administrative justice amounts to a breach of a constitutional duty. But the breach is not an equivalent of unlawfulness in a delictual liability sense. Therefore, an administrative act which constitutes a breach of a statutory duty is not for that reason alone wrongful ... Appreciation of the sense of justice of the community" and "broad considerations of public policy", with reference to the Constitution, must be taken into account (par 138-139). Incorrect or negligent (but honest) decisions should not attract delictual liability, although that may well be the case where decisions are made in bad faith, corruptly or "completely outside the legitimate scope of the empowering provision" (par 144). The statutory scheme in which the duty was imposed, as well as the possible effect liability may have on the state's meagre resources are relevant considerations (par 144). The majority judgement has been criticised (e.g. Quinot G "Worse than

losing a government tender: winning it" 2008 *Stellenbosch Law Review* 101-121) but it remains authoritative.

The aim of this paper will be to consider when and how (if at all) the state's ability to pay, or the extent of the state's resources, should play a role when considering delictual liability.

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Charities: The Third Sector or a Distortion of Democracy?

A recent article by Nina Lück in the *Athens Journal of Law*, July 2015, concluded, (at 161) that 'the renewed European debate about philanthropic governance within the EU is an incentive for a civil society to realise participation and thereby form a European voice for citizens who actively shape democracy'.

In Australia donations to registered charities are tax deductible and the Australian government supports charitable organisations in order to 'outsource' activities that could be seen as government activities.

As an example of this diversion of public funds, in 2010, a wealthy philanthropist donated \$15 million to add a new wing on to the Museum of Contemporary Art ('the MCA') in Sydney. Making such a donation to a worthy cause is an admirable thing to do. However the consequence of this gift, supported by the Australian income tax legislation, was less than admirable. This is because:

- The tax deductible gift gave the donor a tax deduction for the gift being made. Rather than the democratically elected government deciding the spending priorities of government, the spending priorities of individuals are subsidised by the democratically elected government.
- The donation came with an explicit threat to the NSW state government and the Federal government. The philanthropist pledged \$15 million on condition that government funding was sufficient to complete the project. As a result the federal government pledged \$13 million and the NSW government pledged another \$13 million.

This tax deductible donation by a philanthropist diverted government revenues in support of a private passion and is illustrative of how tax deductible charitable donations operate to distort the democratic allocation of public funds.

This paper will explore how the diversion of public funds, by way of tax deductibility status, tax concessions and direct government funding to the charities sector distorts the democratic allocation of public funds.

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**The Impact of the Wage Regulation on the Public Budget:
European Good Practices and Traditional Landmarks in
Romanian Law**

The wage system in the public system is an issue of great importance in time of economic restraints. For economies still facing the effects of the recent global financial crises, the money spent for paying the human resource in the public sector represents a continuous subject of discussion for the politicians, for the economics and for legal experts also.

The paper proposes an analysis of the strengths and criticisms of the legal framework regarding the wage law in the EU Member States, focusing on the particular situation in Romania. The evolution of salaries in the public system in Romania is analyzed, emphasizing certain challenges the authorities had to face during the transition period to the market economy. The systems of salaried employment in the public system of other central and eastern states of Europe are analyzed, using comparison and caselaw analyses and identifying the solutions that could be taken to improve the unitary wage system in Romania. The current advocacy of remuneration in the public system is analyzed, with the interest for the problematic elements that are present in the text and proposing the removal of those who, prior to the entry into force of the normative act, should be modified and updated. Concluding that there is no perfect legal framework in this field but a flexible well orientated one, the paper explains the principles of law that can not be break in a wage law for the public sector.

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Right to Privacy and Its Protection in the Republic of Serbia

Protection of personal data is part of the basic human right to privacy. The right to privacy has for a long time been one of the basic human rights.

In order to protect the privacy of persons, in connection with the processing of personal data, a significant step in the protection of personal data in the Republic of Serbia was made by passing the Law on the Personal Data Protection of 23rd October 2008. This law provides a general legal framework governing the collection, processing and transmission of personal data.

The European Convention for the Protection of Human Rights and Fundamental Freedoms in Article 8. stipulates that everyone has the right to respect for his private and family life, home and correspondence, and that the public authorities will not interfere with the exercise of this right except if such is in accordance with the law and is necessary in a democratic society in the interest of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

In modern conditions the right to protection of personal data, as part of the right to privacy is more vulnerable. According to the Strategy of Personal Data Protection ("*Official Gazette of RS*", no. 58/10) in the Republic of Serbia, treatment and protection of personal data must be based on: - the principle of legality and fair processing of data; - the principle of proportionality; - the principle of accuracy of data; - the principle of data protection; - the principle of trust in data processing; - the principle of the prohibition of processing of especially sensitive data; - the right to information; - the right of access to data; - the right to judicial protection of persons whose data are processed and the right to compensation; - sanctions for unlawful processing of data; - the establishment of an independent supervisory body. Protection of personal data is provided for each natural person, regardless of citizenship and residence, race, age, sex, language, religion, political or other opinion, nationality, social origin and status, property, birth, education, social status or other personal characteristics, and activities of personal data protection are performed by the Commissioner for

information of public importance and personal data protection as an independent state body, independent in exercising its jurisdiction.

Protection of personal data requires adapting information technologies to personal data processing in a lawful manner. There are also very important areas in which relevant regulations governing the issue of the processing of personal data, such as marketing, video surveillance have not yet been adopted. It is necessary to create the necessary regulatory, but also all other assumptions to be preventive and otherwise prevent the endangerment of the right, guaranteed by international agreements and national legislation.

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Taxing Consumption in Brazil: Gendered Aspects

This paper examines the reflections on taxation on consumption in lieu of taxation on income in underdeveloped countries. For these purposes, the article will take Brazil as an example, a country still plagued by great social and economic inequality. The first aspect examined is that tax on income in Brazil, as is the case in most countries, is progressive, with higher tax rates as income level increases and exemption for those in the lowest bracket. Secondly, tax on consumption occurs indiscriminately, on all individuals, regardless of their ability to pay, making it regressive in nature. Another aspect this paper brings forward is the gendered nature of the taxation of consumption. From this perspective, this paper exposes the juxtaposition between the deeply gendered nature of the taxation on consumption and general principles of social justice.

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&

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Achieving the Sustainable Development Goals: Promoting Cooperation and Sustainability

To combat the complex problem of world poverty, the United Nations General Assembly set out eight Millennium Development Goals (MDGs), but as the wealth of countries increased, energy consumption and pollution increased. By 2015, it had become clear that without sustainability, development would ruin the planet. The MDGs were replaced in September 2015 with the Sustainable Development Goals (SDGs). The SDGs include new priorities such as climate change, economic inequality, innovation, sustainable consumption, and peace and justice. They were formulated in anticipation that a broader approach to development might produce a more sustainable result. Successful development involves more than avoiding poverty.

But how can we promote sustainable development, while modifying development to avoid global pollution? We have no examples of increasing economic development without increasing energy consumption and CO₂ emissions, so the challenge before us is an unprecedented and difficult one. We are digging up and burning fossil fuels faster than nature is burying them. We are drinking and irrigating with freshwater faster than the clouds, rivers, and aquifers can supply it, and we are mining minerals faster than plate tectonics can create new deposits. Development solves immediate local problems while making the long-term global problems worse.

The use of our oceans and atmosphere as common waste sinks can no longer be taken for granted or used for the benefit of the few. Nations must cooperate to create sustainable modes of development that take scientific, technical and socio-economic information into account. Navigating a path away from unsustainable development towards sustainable development requires an understanding of the relationships between development, energy consumption and entropy. Maximum cooperative use of low entropy energy sources over time could mean that the pace of exploitation of resources would not outstrip the pace of renewal.

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Legal Representation of Children in Criminal Matters: Does the Child Justice Act 75 of 2008 Provide Adequate Protection?

The Constitution of the Republic of South Africa, 1996 (hereafter “the Constitution”) guarantees every arrested, detained and accused person’s right to legal representation. Section 28(1)(g) of the Constitution reiterates this right specifically in respect of children who come into conflict with the law. The Child Justice Act 75 of 2008 (hereafter “the CJA”) further gives effect to children’s rights in the Constitution and aims to establish a criminal justice system especially for children, setting out the procedures to be followed in cases where children are accused of committing crimes.

The aim of this paper is to examine whether the CJA, in its current form, adequately protects children’s rights to legal representation, as guaranteed in the Constitution, from the moment the child is accused of committing a crime. This paper is based on research done during my Master of Laws degree in Procedural Law at the University of Pretoria.

This paper is divided into three parts. The first part investigates the current South African legislation dealing with the procedures to be followed when children are represented in the South African criminal justice system. The second part of the paper will investigate the right to legal representation of children in criminal matters, as dealt with in selected foreign jurisdictions, as well as in terms of international instruments. The last part of the paper concludes the exposition that law reformation is necessary in South African legislation pertaining to child justice, as legislation currently provides inadequate protection to alleged child offenders - specifically at the assessment and preliminary inquiry stages of the proceedings. The position calls for law reform to give children’s legal representatives better opportunity to protect the child offender’s interests, and to ensure fairness of the procedure.

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**Parallel Lives:
The (Legal) Transplant of German AktG 1937 sections 122-
123 (AktG 1965 section 147) to Greek Law 2190/1920**

Recurring discussion exists about the provision in Greek (Codified) Law 2190/1920 on corporate claims for breach of directors' duties (art. 22b) and whether it is fit for its purpose; both within and outside the confines of Greek academia. Criticism focuses on the obfuscated wording of the provision, the restrictions on shareholders' legal standing posed by it and its unclear relationship with the broader legal framework. However, little attention, if any, is paid to the fact that the said provision was "transplanted" fifty five years ago from the German legal order. Notwithstanding this constituting an exquisite case for the study of legal transplants from a comparatist's viewpoint, the origins of L. 2190/1920 art. 22b may -and do in many ways- explain the scarcity of corporate directors' accountability in Greece. This paper offers a comparative law analysis of art. 22b and the German AktG s. 147 (including its predecessor, s. 122) on the private enforcement of directors' duties in public limited companies, as they developed through time. It shows that alongside some common features shared between the two provisions, many of which account for both the latter's practical insignificance, important differences can be found to have existed from the very beginning of their temporal coexistence; especially when the broader legal context is considered. As is explained, this divergence was augmented by subsequent reforms in Greece and Germany and by the development of the relevant case law in the efforts, inter alia, to rationalize the wording of the provisions and to align their content with the purpose of minority protection. This paper argues that the study of s. 147 and its evolution through time not only facilitates the identification of the deficiencies of art. 22b, but also furnishes solutions towards a more effective framework for the enforcement of director duties and shareholder protection.