



THE ATHENS INSTITUTE FOR EDUCATION AND RESEARCH

Abstract Book

20th Annual International Conference on
Law
10-13 July 2023 Athens, Greece

Edited by
David A. Frenkel & Olga Gkounta

2023

Abstracts
20th Annual International
Conference on Law
10-13 July 2023, Athens, Greece

Edited by
David A. Frenkel & Olga Gkounta

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Preface

This book includes the abstracts of all the papers presented at the 20th Annual International Conference on Law (10-13 July 2023), organized by the Athens Institute for Education and Research (ATINER).

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 only after a blind peer review process.

The purpose of this abstract book is to provide members of ATINER and other academics around the world with a resource through which they can 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 can meet to exchange ideas on their research and consider the future developments of their fields of study.

To facilitate the communication, a new references section includes all the abstract books published as part of this conference (Table 1). I invite the readers to access these abstract books –these are available for free– and compare how the themes of the conference have evolved over the years. According to ATINER's mission, the presenters in these conferences are coming from many different countries, presenting various topics.

Table 1. *Publication of Books of Abstracts of Proceedings, 2010-2023*

Year	Papers	Countries	References
2023	32	16	Frenkel and Gkounta (2023)
2022	37	16	Frenkel and Gkounta (2022)
2021	26	14	Papanikos (2021)
2020	27	14	Papanikos (2020)
2019	46	22	Papanikos (2019)
2018	31	17	Papanikos (2018)
2017	34	13	Papanikos (2017)
2016	25	13	Papanikos (2016)
2015	47	15	Papanikos (2015)
2014	52	25	Papanikos (2014)
2013	60	20	Papanikos (2013)
2012	43	17	Papanikos (2012)
2011	52	13	Papanikos (2011)
2010	61	12	Papanikos (2010)

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 can regularly meet to discuss the developments of their disciplines and present their work. Since 1995, ATINER has organized more than 400 international conferences and has published over 200 books. Academically, the institute is organized into 6 divisions and 37 units. Each unit organizes at least one annual conference and undertakes various small and large research projects.

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

Gregory T. Papanikos
President

Editors' Note

These abstracts provide a vital means to the dissemination of scholarly inquiry in the field of Law. The breadth and depth of research approaches and topics represented in this book underscores the diversity of the conference.

ATINER's mission is to bring together academics from all corners of the world in order to engage with each other, brainstorm, exchange ideas, be inspired by one another, and once they are back in their institutions and countries to implement what they have acquired. The 20th Annual International Conference on Law accomplished this goal by bringing together academics and scholars from 16 different countries (Brazil, Canada, China, Czech Republic, France, India, Ireland, Italy, Philippines, Romania, Russia, South Africa, Türkiye, UAE, UK, USA), which brought in the conference the perspectives of many different country approaches and realities in the field.

Publishing this book can help that spirit of engaged scholarship continue into the future. With our joint efforts, the next editions of this conference will be even better. We hope that this abstract book as a whole will be both of interest and of value to the reading audience.

David A. Frenkel & Olga Gkounta
Editors

**20th Annual International Conference on Law, 10-13 July
2023, Athens, Greece**

Organizing & Scientific Committee

All ATINER's conferences are organized by the Academic Council. This conference has been organized with the assistance of the following academic members of ATINER, who contributed by reviewing the submitted abstracts and papers.

1. Gregory T. Papanikos, President, ATINER & Honorary Professor, University of Stirling, U.K.
2. David A. Frenkel, LL.D., Adv., FRSPH(UK), Head, Law Research Unit, ATINER & Emeritus Professor, Law Area, Guilford Glazer Faculty of Business and Management, Ben-Gurion University of the Negev, Beer-Sheva, Israel.
3. Michael P. Malloy, Director, Business and Law Research Division, ATINER & Distinguished Professor & Scholar, University of the Pacific, USA.

FINAL CONFERENCE PROGRAM

20th Annual International Conference on Law, 10-13 July 2023, Athens, Greece

PROGRAM

Monday 10 July 2023

08.30-09.15
Registration

09:15-09:45

Opening and Welcoming Remarks:

- **Gregory T. Papanikos**, President, ATINER.

09:45-10:00

Opening and Welcoming 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.

10:00-11:30 Session 1

Moderator: 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. **John Kleefeld**, Professor, University of New Brunswick, Canada.
Title: Spatiotemporal Influence of Judicial Decisions: The Case of Donoghue v Stevenson.
2. **Areto Imoukhuede**, Professor, Florida A&M University, USA.
Title: Leaving Langdell and Resurrecting Socrates Online.
3. **Nayel Alomran**, Associate Professor, Zayed University, UAE.
Title: Digital Evidence before the Administrative Courts in Jordan.

Discussion

11:30-13:00 Session 2

Moderator: John Kleefeld, Professor, University of New Brunswick, Canada.

1. **Garima Tiwari**, Associate Professor, Bennett University, India.
Title: Promoting Effective Refugee Protection in India: Balancing National Interests and International Obligations.
2. **Rika Van Zyl**, Senior Lecturer, University of the Free State, South Africa.
Title: Public Policy conundrum in Private Wills.
3. **Jennel Cheng**, Juris Doctor, Arellano University School of Law, Philippines.
Title: The Philippines Readiness in Addressing Food Security by Minimizing the impact of Climate Change.

Discussion

13:00-14:30 Session 3

Moderator: Jennel Cheng, Juris Doctor, Arellano University School of Law, Philippines.

1. **Anna Chronopoulou**, Senior Lecturer, University of Westminster, UK.
Title: The Presence of the Absence: Portrayals of Women Legal Academics in Films.
2. **Henda Steyn**, Lecturer, University of the Free State, South Africa.
Title: A Proposed Legal Framework for Implementing and Regulating Financial Therapy in the South African Financial Planning Law Landscape.

<p>3. Alexander Carl Dinopoulos, PhD Student, Charles University, Czech Republic. <i>Title: The State of Exception De-Institutionalized.</i></p> <p>4. Emmanuel Nartey, Senior Lecturer, Open University, UK. <i>Title: A Critical Assessment of Corporate Human Rights Violation and Environmental Damages Under Tort Law.</i></p> <hr/> <p>Discussion</p>	
<p>14:30-15:30 Discussion + Lunch</p>	
<p>15:30-17:00 Session 4 Moderator: Mr. Konstantinos Manolidis (ATINER Administration)</p>	
<p>1. Gaetan Balan, Associate Professor, Catholic University of Lyon, France. <i>Title: The Law of the Sea and Climate Change: An EU Perspective.</i></p> <p>2. Maria Luisa Chiarella, Associate Professor, Magna Graecia University of Catanzaro, Italy. Manuela Borgese, Professor, Magna Graecia University of Catanzaro, Italy. <i>Title: Data Act: New Rules about Fair Access to and Use of Data.</i></p> <p>3. Dane Ally, Associate Professor, Tshwane University of Technology, South Africa. <i>Title: The Imposition of Chemical Castration as Punishment for Sexual Offenders in South Africa: A Human Rights Perspective.</i></p> <hr/> <p>Discussion</p>	
<p>17:00-18:30 Session 5 Moderator: Mr. Konstantinos Manolidis (ATINER Administration)</p>	
<p>1. Jean Fougerouse, Associate Professor, University of Angers, France. <i>Title: The Shared-Initiative Referendum in France: A Path Closed?</i></p> <p>2. Larissa Pochmann da Silva, Professor, Estacio de Sa University, Brazil. <i>Title: Class Actions and the Economic Analysis of Law.</i></p> <p>3. Heron Gordilho, Professor, University of Bahia, Brazil. <i>Title: Paths towards a New Legal Status for Animals in France.</i></p> <hr/> <p>Discussion</p>	
<p>20:30-22:30 Athenian Early Evening Symposium (includes in order of appearance: continuous academic discussions, dinner, wine/water, music and dance)</p>	
<p>Tuesday 11 July 2023</p>	
<p>08:30-10:00 Session 6 Moderator: Mr. Konstantinos Manolidis (ATINER Administration)</p>	<p>07:30-10:30 Old and New-An Educational Urban Walk</p>
<p>1. Peng Han, Associate Professor, Lingnan University, China. <i>Title: Perspectives on Legal Protection of Persons with Disabilities in Workplace in HK.</i></p> <p>2. Yongliang Yan, Assistant Professor, Beijing Jiaotong University, China. <i>Title: The Space Transportation Regime in China: Status Quo, Shortcomings and Possible Ways Out.</i></p> <hr/> <p>Discussion</p>	<p>The urban walk ticket is not included as part of your registration fee. It includes transportation costs and the cost to enter the Parthenon and the other monuments on the Acropolis Hill. The urban walk tour includes the broader area of Athens. Among other sites, it includes: Zappion, Syntagma Square, Temple of Olympian</p>
<p>10:00-11:30 Session 7 Moderator: Mr. Konstantinos Manolidis (ATINER Administration)</p>	

<p>Administration)</p> <ol style="list-style-type: none"> Vladimir Orlov, Professor, Herzen State Pedagogical University of Russia, Russia. <i>Title: Dispositivity in Russian Business Law.</i> Yunbo Zhang, Master Student, Zhongnan University of Economics and Law, China. <i>Title: The Study on the Effectiveness of Arbitration Clauses in International Commercial Arbitration – From the Perspective of Contract Non-Formation.</i> Tshilidzi Knowles Khangala, Lecturer, Tshwane University of Technology, South Africa. <i>Title: The Analysis of South Africa’s Constitutional and UNCRC-Imposed Obligations to Achieve Children’s Socio-Economic Rights: A Critique.</i> 	<p>Zeus, Ancient Roman Agora and on Acropolis Hill: the Propylaea, the Temple of Athena Nike, the Erechtheion, and the Parthenon. The program of the tour may be adjusted, if there is a need beyond our control. This is a private event organized by ATINER exclusively for the conference participants.</p>
<p>Discussion</p>	

11:30-13:00 Session 8

Moderator: Jorge Nunez, Reader, Manchester Metropolitan University, UK.

- Gulcin Demircan**, Research Assistant, Izmir Democracy University, Turkiye.
Title: Mobbing In Individual Application Decisions of The Turkish Constitutional Court.
- Viktoriia Hamaiunova**, PhD Candidate, Newcastle University, UK.
Title: Visible and Implicit Legal Cultures of ECtHR Countries.
- Harsh Pathak**, PhD Student, Christ University, India.
Title: Armed Conflict and Climate Change- Research Study on the Impact of Climate Change in the Himalayas with Special Reference to the Water Treaties.

Discussion

13:00-14:30 Session 9

Moderator: Emmanuel Nartey, Senior Lecturer, Open University, UK.

- Elias Grivoyannis**, Associate Professor, Yeshiva University, USA.
Constantine H. Grivoyannis, M.H.A., M.R.M., M.S. (Taxation) Associate, Forensic Economic Damages, LLC, USA.
Title: The Debate About The Taxation of The Compensatory Damages Awards: A Forensic Economics Perspective.
- Jorge Nunez**, Reader, Manchester Metropolitan University, UK.
Title: Cosmopolitanism and State Sovereignty: A Multidimensional Approach.

Discussion

14:30-15:30 Discussion + Lunch

15:30-17:00 Session 10

Moderator: Mr. Konstantinos Manolidis (ATINER Administration)

- Ger Coffey**, Associate Professor, University of Limerick, Ireland.
Title: Proactive Intelligence-Led Policing Examined through the Lens of Covert Surveillance Operations in Ireland.
- Marta-Claudia Cliza**, Associate Professor, Lecturer, University of Nicolae Titulescu of Bucharest, Romania.
Laura-Cristiana Spataru-Negura, Lecturer, University of Nicolae Titulescu of Bucharest, Romania.
Title: New Perceptions of Democracy after the Covid-19 Pandemic.
- Merve Duysak**, Assistant Professor, Istanbul Okan University, Turkiye.

Title: Legal Developments as to “Cyber Grooming” actions from Lanzarote Convention to now.

Discussion

17:00-18:30 Session 11

Moderator: Mr. Konstantinos Manolidis (ATINER Administration)

1. **Jill St George**, Lecturer, The Open University, UK.
Title: Constitutional Change in Barbados – From Saving to Abolishing.
2. **Elena Emilia Ștefan**, Associate Professor, “Nicolae Titulescu” University of Bucharest, Romania.
Title: Climate Change – An Administrative Law Perspective.
3. **Lavinia Iancu**, Lecturer, Tibiscus University, Romania.
Title: Covid Influence in Insolvency in Romania.

Discussion

19:00-20:30

Ancient Athenian Dinner (includes in order of appearance: continuous academic discussions, dinner with recipes from ancient Athens, wine/water)

Wednesday 12 July 2023
An Educational Visit to Selected Islands
or
Mycenae Visit

Thursday 13 July 2023
Visiting the Oracle of Delphi

Friday 14 July 2023
Visiting the Ancient Corinth and Cape Sounio

Dane Ally

Associate Professor, Tshwane University of Technology, South Africa
&

Linda Mbana

Executive Manager: Regulatory and Law Enforcement, Cross Border
Road Transport Agency, South Africa

The Imposition of Chemical Castration as Punishment for Sexual Offenders in South Africa: A Human Rights Perspective

There has been a significant increase in sexual violence statistics in the Republic of South Africa. As a result, the social transformation sub-committee of the ruling political party (the African National Congress) recently repeated the call that chemical castration (also known as Anti-libidinal interventions - ALIs) be introduced as a sentencing option for sexual offenders. This response to the mentioned increase has been frowned upon by a male support group, known as the Million Men March Organisation (Million Men), situated in Polokwane, South Africa. They assert that such a sentencing option would fly in the face of the founding provisions of a democratic society based upon the enhancement of human rights and freedom. We adhere to a two-phased analysis, as described in the seminal case of *S v Makwanyane* 1995 3 SA 391 (CC), to determine whether the proposed sentencing option would survive constitutional muster. During the first phase of the analysis, we consider whether the proposed sentencing option constitutes a violation of the provisions of the Constitution of the Republic of South Africa, 1996 (the Constitution), more particularly sections 12(1)(d) (freedom from torture), 12(1)(e) (not to be treated or punished in a cruel, inhuman, or degrading way), 10 (human dignity), and 9 (equality). We argue that the suggested sentencing option violates each of the mentioned human rights. During the second phase of the assessment, we subject the suggested sentencing option to a limitations clause analysis, to determine whether chemical castration would be deemed a "reasonable and justifiable" limitation of the mentioned fundamental rights.

Nayel Alomran

Assistant Professor, Zayed University, UAE

Digital Evidence before the Administrative Courts in Jordan

The importance of this study is underscored by the administrative decision by the Government of Jordan to cease the provision of ten major services in traditional paper-based methods and to adopt electronic submission only, as of 1/1/2018. This decision affects a handful of ministries and government institutions as the first stage of a larger plan to adopt comprehensive e-government across all government agencies. The decision to apply e-government in Jordanian ministries and government departments in its internal and external transactions requires the existence of a basic technological infrastructure so that citizens can obtain information quickly, efficiently and transparently. The problem of the study is that the application of the e-government system in institutions and government ministries is stymied by a weak ICT infrastructure and poor internet performance. The challenge is accentuated by the lack of understanding and know-how of the concept of e-government and its tools among the government employees and citizens and the lack of legislation governing electronic transactions and the absence of electronic signature regulating transactions. To explore this issue, the researcher used the descriptive and analytical method to assess the reality and practicality of applying e-government in Jordanian government institutions and to identify the obstacles to its application.

Gaëtan Balan

Associate Professor, Catholic University of Lyon, France

The Law of the Sea and Climate Change: An EU Perspective

The creation of the law of the sea is based on the definition of maritime areas like the High Sea, territorial sea or the exclusive economic zone. These definitions framework has been achieved by the UNCLOS, which can let us examine the territorialisation of the law through how Coastal States exercise their own legal frameworks, especially upon the rules of navigation. However, the planet and the seas are changing and continue to evolve, and this process will be increased by the consequences of the climate change. Regarding this reality, the rising sea level will have massive impacts on coastal communities which needs to be considered by the Coastal States. They have the duty to protect their population located in the coastal area. If the phenomenon is a global issue, this proposition focuses only on the EU perspective to analyse a global action. This contribution purposes to examine the political and legal action of the European Union regarding this ongoing reality.

The European Union is the world's most integrated regional organisation and have many fitting skills to anticipate and manage this situation to try to find a legal and logistical solution. The legal framework of the EU and especially the solidarity legal principle will be tested in this incoming situation. Indeed, this threat is an issue which will impact at the same time the ecology, and human, economic and public order. The sea has to be a place of life and hope. The only legal way is to develop a global legal framework that adapts the action of the coastal states to this new reality. This perspective will affect the majority of the EU's own 23 coastal member states and their own maritime security and safety. Current technology could help the member states to protect their coastal areas. However, we need to keep in mind that this solution only lends a short breathing time to the coastal and archipelagic states but do not solve the situation. Sea-level rise will create a new geographic reality, including the transformation of maritime zones, and its impact on critical infrastructure could strongly affect the EU coastal communities and their citizens.

This natural threat which is looking to pose a serious, vital challenge regarding the protection of populations and the preservation of critical infrastructures such as seaports, power plants, or low-lying cities, might also even impact the very shape of coastal nations, and therefore even their relationships with their own territorial seas and

EEZ. This potential threat needs to be examined through the lens of the international law of the sea.

Jennel Cheng

PhD Student, Arellano University, Philippines

The Philippines Readiness in Addressing Food Security by Minimizing the Impact of Climate Change

The United Nations said that Climate Change is a long term shifts in weather pattern that could be natural such as variations in the solar cycles. Sec. 16. Art. II of the 1987 Philippine Constitution states that, "The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature." In 2020, the Paris Agreement is the pinnacle of international law on climate change. It orchestrates global climate action over the coming decades. Countries agreed to limit global warming to well below 2°C above preindustrial times, closer to 1.5°C. This year at the World Economic Forum, Climate Change was one of the biggest economic factors that plays a vital role globally. This means that aside from the global terrorist threat, Climate Change is now a global threat that raises a global concern that needs an urgent attention. In the Metaphysics perspective, this year will bring out more issues on climate change affecting the productivity of farmers especially in Q3 and Q4. Climate change affects the productivity of the people and productivity affects the food production which is a matter of concern for every world leader. Like a state protecting its territory borders from invaders, world leaders need to protect their respective countries to ensure food security.

Climate Change management involves a lot of methodologies and this includes Forecasting climate change impact or develop site mapping impact analysis on areas that could potentially be hit by climate change effect like floods, landslides or earthquakes. This is where Qi Men Dun Jia Forecasting Model and Methodology is very much of great significance and help.

Forecasting is one method that can help to anticipate the tremendous impact of climate change. Too much heat or too much water are both non beneficial. Attaining balance is simply the key.

Climate change does also impacts everything including tourism. In Europe where Aurora is a very famous attraction but because of climate change heat on the ground produces thick clouds and when clouds are present, Aurora is absent. If this will continue to happen it will eventually impact those in the tourism industry involving Aurora and as such they will eventually be hit economically. This is why it is in the premise of this research to present ways in Addressing Food Security by Minimizing the impact of Climate Change.

Maria Luisa Chiarella

Associate Professor, Magna Graecia University of Catanzaro, Italy

&

Manuela Borgese

Professor, Magna Graecia University of Catanzaro, Italy

Data Act: New Rules about Fair Access to and Use of Data

Data-based technologies take on a more concrete relevance every day. The constant increase in products connected to the Internet corresponds to an increase in the volume of data generated, the content of which represents a fundamental development factor for technological evolution and with a high potential for businesses, citizens and the PA. These assumptions are now the basis of an important regulatory proposal, the so-called Data Act, which aims to create a European regulatory framework, based on clear rules regarding the sharing of general data from the use of connected products or similar services.

In particular, the removal of barriers that currently limit the interoperability of such data represents a fundamental development factor for the internal digital market, to the advantage of competitiveness, innovation and sustainable economic growth. To create such a framework, a harmonized framework is therefore needed, free from the fragmentations of national legislations, with clear rules regarding the identification of who has the right to use the data collected, obtained or otherwise generated by connected products or digital services. The enormous scope of this future legislation already highlights the first undisputed advantage in favor of SMEs, today in fact limited by the benefits deriving from access to such data both due to the lack of digital skills to collect, analyze and use them and due to of the non-existent information interoperability with the operators who hold them.

The European Parliament recently adopted its position on this proposal, providing for more measures to allow users to access the data they generate and increasing the guarantees of data sharing agreements between companies. In particular, the Parliament's proposal aims to rebalance the negotiating power to protect weaker companies, identifying greater protection with respect to possible contractual imbalances with companies in a dominant position. The regulatory process still provides for several steps, however we can already speak of a framework based on clear rules that lay the foundations for concrete growth with real advantages for citizens, businesses and the PA.

Anna Chronopoulou

Senior Lecturer, University of Westminster, UK

The Presence of the Absence: Portrayals of Women Legal Academics in Films

Academic accounts in the field of law and popular culture have examined amongst other themes, portrayals of justice, legal narratives, and courtroom battles. More recently, undercutting themes of this body of literature constitute representations of lawyers in films and TV series. The overwhelming majority of these accounts examines on screen representations of male lawyers, almost in its entirety. Although cinematic and television portrayals of women lawyers are increasingly becoming the subject of study in academic accounts, they still seem to be confined within the Anglo-American traditions with a few notable exceptions extending to films and TV series from other countries and more recently the Middle East. Notwithstanding the importance of this body of work, it is hardly ever the case that it investigates cinematic representations of legal academics. Even more importantly, on screen representations of women legal academics hardly ever become the subject of investigation in the academic accounts of law and popular culture.

The main objective of this paper is to explore and address this absence. It puts forward the suggestion that the notable absence of the theorisation of cinematic representations of female legal academics' points to further gender and racial inequalities that remain unexplored. In doing so, this paper is split in three parts. The first part attempts to offer a theorisation on the way female academics are portrayed on celluloid. The second part of the paper examines portrayals of female legal academics, while drawing parallels with representations of women academics in general. The third part compares cinematic depictions of women legal academics to the real-life experience of being a female legal academic. Regarding methodologies, this paper uses a small qualitative sample of films from a number of cinematic traditions including but not necessarily restricted to the Anglo-American tradition.

Marta-Claudia Cliza

Associate Professor, Lecturer, University of Nicolae Titulescu of
Bucharest, Romania

&

Laura-Cristiana Spataru-Negura

Lecturer, University of Nicolae Titulescu of Bucharest, Romania

New Perceptions of Democracy after the COVID-19 Pandemic

The year 2020 was a year of big changes and challenges, including in terms of fundamental rights and freedoms caused by the COVID-19 pandemic. Started as a worldwide health crisis, the pandemic has been transformed in a global crisis for democracy. The pandemic presented a range of new challenges to democracy and human rights, in repressive regimes and in open societies.

The COVID-19 pandemic has had a defining impact both on states, and on the international community, requiring radical economic and social decisions taken very fast.

We believe that there is an interdependent relationship between democracy and human rights, because the will of the people matters in such a political regime, in whereas in a totalitarian system the recognition of human rights is only formal. Recognition of human rights presupposes the existence of a free state, a democratic state, subject to the separation of powers in the state, being recognized the principle of legality.

Any democratic society operates on the principle of legality which guarantees respect for human rights, which means balancing individual interests with the general interests of a democratic society. This can be achieved by obliging state authorities to take the necessary steps to create the appropriate legal framework in which the rights of human rights are a pillar of society, with flagrant violations being severely sanctioned.

This is obvious since human rights presuppose the existence of a functional democratic political system. For a state to guarantee respect for human rights, the state must have the public force to be able to protect the deviations from against individuals within its territory.

The measures taken by the states during the COVID-19 pandemic could be considered in some cases in serving the political interests of the state leaders, often at the expense of public health and of basic freedoms. The restrictions imposed by the state authorities could be translated in pressure to accept restrictions and have a lasting effect on liberty.

Certain measures taken by the states worldwide have been very controversial, for example when the Hungarian parliament voted to give to Prime Minister Orbán the authority to rule by decree in the name of fighting COVID-19.

Even the headlines in the media were very eloquent, in this case, for example, Washington Post declared “Coronavirus kills its first democracy”. Although, in Hungary, the power to rule by decree was later revoked, observers warned these new authorities could be used again in future crises.

The international non-governmental organizations raised concerns regarding the impact of such measures on democracy and on human rights. For example, Freedom House reported that since the outbreak of coronavirus, democracy and human rights have worsened in 80 countries, “with particularly sharp deterioration in struggling democracies and highly repressive states”.

Therefore, in the present study we envisage to analyse these new perceptions of democracy after the COVID-19 pandemic and how the coronavirus reshaped democracy and human rights.

Ger Coffey

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Proactive Intelligence-Led Policing Examined Through the Lens of Covert Surveillance Operations in Ireland

Proactive intelligence-led policing methods are indispensable for the detection, investigation, and prevention of serious criminal offences. Covert investigations are an everyday occurrence, especially with the ongoing technological advances and the availability of more specialised devices. The capacity to monitor, video audio record suspects has been greatly enhanced with the availability of new technological resources. The Criminal Justice (Surveillance) Act 2009 (Ireland) consolidated the ability of state agencies to detect, investigate, and prevent the commission of serious criminal offences in Ireland. Members of An Garda Síochána, officials of the Revenue Commissioners, Defence Forces and Garda Síochána Ombudsman Commission representatives may covertly enter a 'place' and conceal surveillance devices. This policing method is predicated on reasonable grounds suggesting that information and intelligence garnered by covert surveillance operations may prevent the commission of serious criminal offences or whereby evidence for the pursuit of serious crime investigation may be identified and garnered to be tendered in evidence at trial. The 2009 Act also clearly contemplates the harvesting of relevant information for ongoing intelligence purposes. Statements made by suspects against interest, admissions or plans for the commission of serious criminal offences, may be admissible in evidence as exceptions to the rule against hearsay. This is significant in the context of proactive intelligence-led policing strategies to tackle the consequence of serious criminal offences, organised crime, and terrorist activities. The legal context and interpretation of the 2009 Act have been considered by the Irish superior courts through seminal jurisprudence and judicial guidance that delimit the intricacies of covert operations.

This paper considers the powers and functions conferred by the 2009 Act to bolster the resources of appropriate criminal justice agencies to detect, investigate and apprehend suspects, the management and use of covert intelligence operations, constitutional and human rights issues. The analysis will encompass procedural requirements for external 'authorisation' for surveillance with judicial oversight, internal 'approval' without judicial oversight, the use of tracking devices as a less intrusive measure, and whether substantive and procedural safeguards are adequate to protect fundamental rights of persons subject to covert surveillance operations. The advantages of covert

surveillance are obvious for the prevention, detection and investigation of offences, however the use of covert operations might endanger the rights of suspects including other persons associated with the target of such operations. Policy considerations underpinning the necessity for this legislation and the operation of the 2009 Act will be scrutinised. This assessment will consider whether there are sufficient procedural safeguards in the 2009 Act, and whether the use of covert surveillance as a tool of effecting 'crime control' policies is proportionate and necessary commensurate with ECtHR jurisprudence. While covert operations in Ireland are presented as a case study, reference to international best practice and human rights standards emanating from ECtHR jurisprudence will broaden the scope of analysis that is intended to be of interest to a wider audience.

Gülçin Demircan

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Mobbing in Individual Application Decisions of the Turkish Constitutional Court

There is no consensus on definition of mobbing in doctrine but generally is defined systematic negative behaviors that should occur in the workplace and psychological harassment. The term psychological harassment is also used by the Turkish Constitutional Court as an equivalent for the concept of mobbing. The Constitutional Court does not specify a clear definition of mobbing in its decisions but includes actions that constitute mobbing such as psychological harassment, violence, and intimidation. The applicants claiming that they have been subjected to psychological harassment, mainly apply to the Constitutional Court on the right to protect and improve his/her corporeal and spiritual existence which is guaranteed by the first paragraph of Article 17 of the 1982 Constitution of the Republic of Turkey is violated. Also, the third paragraph of Article 17 (*No one shall be subjected to torture or mal-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.*) is used by applicants to allegations of they are a victim of mobbing. The right to protect and improve his/her corporeal and spiritual existence guaranteed by the Constitution, is accepted as the equivalent of the right to physical and moral integrity safeguarded within the scope of the right to respect for private life under Article 8 of the European Convention on Human Rights. In the decisions of the Constitutional Court, it is stated that for the treatments claimed to be mobbing by the applicants to be within the scope of the third paragraph of Article 17 of the Constitution must be above a minimum level of severity. However, the Court generally finds that the minimum level of severity is not exceeded because of the applicants' age and professional status. In this study, the approach of the Turkish Constitutional Court, which has the authority to examine individual applications according to the 1982 Turkish Constitution, regarding the concept of mobbing will be discussed, especially considering its recent decisions.

Alexander Carl Dinopoulos

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The State of Exception De-Institutionalized

In modern democratic states ruled by laws, unforeseen extreme situations present an existential threat to the democratic rule of law legal order. Limited by the “inflexibility of laws”, the modern state of exception arises in response to situational conditions present as a remedial political institution released from the prescribed norms of a set up legal order, with the sole purpose of re-establishing normalcy. The institutional understanding of the modern state of exception within democracy arises from revolutionary France. Theorist Giorgio Agamben identifies the law of *Fructidor 18* as the first occasion of a modern parliamentary legislative government “grant[ing] itself the right to put a city in a state of siege”. Having to decide between either implementing effective measures or remaining within the rule of law legal order, French parliament would “open the constitutional barrier in front of the soldiers of the fatherland”. Under this pretext, the *etat de siege* would allow the emerging French republic in the 18th century to effectively respond to extremities.

Despite this institutional understanding within “democratic-revolutionary tradition”, the modern state of exception appears to have since developed based upon the medieval legal maxim *necessitas legem non habet*. Whereas initially upon extreme situations arising, the state of exception would provide for civil authority to be entrusted within the hands of military competence, the recent examples of state of exceptions allow for the assumption of enhanced power from government beyond the limitations of a democratic rule of law legal order, based upon a justification of necessity. This development of the state of exception would become apparent during World War I in France. Despite having declared a state of siege, the executive government would also enjoy enhanced political power justified on the grounds of “necessity”, as was the case with the Law of February 10, 1918. Extraordinary governance appears to have since long shed itself of its original institutional premise. Indicative of this development is the fact that present day France has since created three more avenues to extraordinary governance on the basis of “necessity”, leading to enhanced power by the government.

The first objective of this paper will be to present how the state of exception was understood at the onset of modern democracy within republican France as a transfer of extraordinary powers to an institution outside the government. By using parliamentary discussions leading to

the Law of 18 *Fructidor*, the “democratic-revolutionary” perception of the state of exception will be better understood. In presenting the developments of the state of exception from France, this paper will be allowed to pursue its second objective and uncover to what degree the modern state of exception is still understood in institutional terms. The final objective will be to assess the extent to which the modern state of exception is indeed based upon “democratic-revolutionary tradition”. To understand the state of exception as enhanced governance beyond the democratic rule of law legal order, justified by necessity, would appear to arise out of legal theory foreign to those echoed within “democratic-revolutionary tradition”.

Merve Duysak

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Legal Developments as to "Cyber Grooming" Actions from Lanzarote Convention to Now

With the development of technologies, communication medium tilts to the cyber world from the material world. Transformation is so quick, and the legal background is still in progress. According to the statistics, internet users have been increasing rapidly, especially since the pandemic. Gaming platforms, chat platforms, and video conferencing applications are not only for grown-ups but also for children nowadays. The children users we encourage for educational purposes especially are the target of cybercrimes. One such offense is approaching a child through the technology of information and communication for sexual reasons also known as cyber-grooming. The first stage of criminal behavior is an online conversation between the perpetrator (groomer) and the victim (child). There are some patterns in the communication to gain the trust and sexually desensitize the child. For example, the groomer mainly introduces himself/herself to the child as also child by using fake photos, videos, and stories. In the second stage of the crime, the perpetrator aims to physically contact the target. Even though this is a new type of criminal behavior there are international and national norms to penalize it. The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, also known as "the Lanzarote Convention", is the first international legal document that refers to these actions as a crime. Aiming to protect children from sexual exploitation and sexual abuse, the convention sets out some responsibilities to State parties such as criminalizing child grooming as a separate offense. The influence of this document could be observed in the State parties' national legislation (ex. France, Italy, Belgium, Greece). This presentation aims to make the issue visible and suggest all State parties to taking necessary legislative measures against these types of sexual violence to protect the children.

Jean Fougerouse

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**The Shared-Initiative Referendum in France:
A Path Closed?**

The shared-initiative referendum was introduced into the French constitution in 2008. Since then, it has resulted in only five unsuccessful attempts. While parliamentary democracy seems to be running out of steam, this path of popular expression seems largely obstructed. On the one hand because of the formal conditions set by the constitutional text and in particular the gathering of more than 4 million signatures, but also because the Constitutional Council ensures a necessary control but whose decisions are still not free of criticism. Indeed, the assessment of the limits that the constitutional judge enforces is subject to discussion as well as the reasoning he follows. This analysis naturally leads us to question the legal but also political role of the Constitutional Council.

Heron Gordilho

Professor, University of Bahia, Brazil

Paths towards a New Legal Status for Animals in France

For modern Civil Law, the object of the law is the goods and benefits, where good is any utility, material or ideal, capable of influencing the subject's faculty of action, from the things themselves, susceptible to pecuniary appreciation, to those that do not have an economic value. According to Orlando Gomes, good is the genus and thing is the species, since there are things that are not goods, since they do not interest the Law, and ideal utilities that are legal goods, although they are not things. On the other hand, economicity is not inherent to the notion of legal good. Freedom, for example, is a legal good even though it is not a thing or has economic value. This literature review article will analyze the possible reflexes of the changes introduced in the French Civil Code by Law No. 177 of February 16, 2015, which expressly recognized that animals are sentient beings, although they remain an appropriable good, unless otherwise provided. The research method used will be historical-evolutionary, to investigate the background and conditions that allowed a slow evolution of the legal status of animals in France. The research techniques will be bibliographical and documentary, with access to laws, legislative documents and court decisions on the subject. Initially, a brief summary of the origins of the French Civil Code will be made, starting from the social and political conditions that followed the French Revolution and the influence of Roman law and modern philosophy in its writing, which ended up establishing the legal status of animals as "things" susceptible to appropriation. Then, the evolution of animal protection in French law will be analyzed, from the advent of the Grammont Law, through the Criminal Code and the Rural and Marine Fisheries Code, until we reach the recent changes introduced by Law No. 177/2015 in the French Civil Code. Finally, this article will conclude that there is a slow evolution in animal protection in French Law, and that the recent changes introduced in the Civil Code established a subtle change in the legal status of animals, which stopped being considered inanimate things and started being considered sentient beings, opening an important gap for new legislative and jurisprudential advances.

Elias Grivoyannis
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&
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The Debate about the Taxation of the Compensatory Damages Awards: A Forensic Economics Perspective

The debate on the taxability of compensatory damages awards in litigation cases involving personal injury or wrongful death on the one hand, and employment discrimination or wrongful termination on the other has long been a subject of controversy. Opponents of taxing compensatory damages argue that it would lead to double taxation and constitute an unfair burden on the plaintiff recipient. However, the forensic economics literature presents a strong case for taxing these compensatory damages. This essay will discuss the debate on taxing compensatory damages awards and present the top reasons why compensatory damages awards should be taxable.

Viktoriiia Hamaiunova
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Visible and Implicit Legal Cultures of ECtHR Countries

Being a relatively new term with a rather old concept, the term 'legal culture' has received different interpretations (from social control to part of state law). Sometimes it is also used in the plural in order to highlight the characteristics of a particular society in time and space. Legal culture has many expressions from academic thought to law enforcement and serves as a kind of language for interpreting the spirit of law.

Based on the discrepancy between the written law and academic thought with law enforcement and unwritten laws operating within some societies, one can assume the existence of a visible culture and implicit culture.

Not all cultures have the same conception of law and its role in dispute settlement. The legal culture of each state is multilayered and represents a unique synthesis of trends and values, which complicates its unambiguous classification in one of the systems. This will not give a complete understanding of legal culture and will lead to a significant simplification of its features. This research will analyze the conception of the right to a fair trial general legal culture of the ECtHR countries as an example of discrepancies between visible and implicit legal cultures.

Court culture which is a part of the legal culture is linked to court cases, the norms that guide procedures and resolutions, court staff and their educational background as well as court customers. It is composed of a judge's environment, worldview and education as well as the psychological toolboxes with which judges fulfil their professional duties. When any legal decision is made, a decision maker's ideology and personal ways to think are in play because adjudication is not a technical subject, nor pure science in contemporary society.

The objectivity of a court as well as the impartiality of a judge are basic legal principles, but there is no option so far to avoid the influence of court culture. Therefore, the cultural issues truly merit attention in a study which entails research of legal institutions.

The interaction of legal culture and the legal system has different interpretations, which is associated with different ideas about the concept of legal culture. For the purposes of this study, an approach will be used that assumes that the legal culture covers both the social and legal forces that give impulses and life for the law, law per se as well as the influence of law on society. This allows us to evaluate the

norms of law as objects of legal culture and test the hypothesis of visible culture and implicit culture.

Peng Han

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Perspectives on Legal Protection of Persons with Disabilities in Workplace in Hong Kong

Discrimination always happened in workplace especially which refers to employers treating individuals differently in employment due to their disability. In Hong Kong, despite legal protection provided in various ways, employers are still wearing colored glasses to treat them and doubt with the work ability of people with disabilities. This causes problems that many people with disabilities are hard to find their jobs and they are always being discriminated by others in workplace.

Disability discrimination can occur in many ways. For example, direct discrimination which means treated worse than others in similar situations due to disability, indirect discrimination refer to there are some policies that affects persons with disabilities unequally, harassment that is someone experiences bullying or unwanted behavior related to disability and etcetera. Even though there are already some laws implemented to protect the disabilities, cases concerning disabilities discrimination still happened frequently.

In this article, I will introduce the current employment status of disabilities such as the dilemma they faced in workplace in HK, followed by an introduction of some notable disabilities' discrimination cases (e.g., Mr. Kowk v Mr. Law etc.). Moreover, this paper will study whether existing laws of Hong Kong can effectively protect the right of people with disabilities. This paper will also show the limitation of current laws and provide suggestions.

Lavinia Olivia Iancu
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COVID-19 Influence in Insolvency in Romania

The COVID-19 pandemic installed at the beginning of 2020 influenced the matter of insolvency. A series of measures were adopted to protect de debtors already insolvent on one hand, and new procedures were established on the other hand to ensure the ongoing insolvency proceedings. We can observe a special attention of the legislator in protecting legal person debtors compared to natural person debtors.

Although the pandemic deeply affected citizens, they did not access the insolvency procedure of the natural person, but this procedure could represent a solution for overcoming their financial difficulties. The Romanian legislator did not intervene in the modification of the legal text, although the doctrine claimed a complicated procedure, with generally unattractive and interpretable notions.

The financial difficulties faced by the business environment convinced the Romanian legislator, in 2022, to focus on insolvency prevention procedures, creating a modern framework for extrajudicial negotiations of the debts with the creditors.

Although a year has passed since the end of the state of alert in Romania, and the effects of the pandemic are still visible, the method of administering insolvency procedures that offers effective solutions implemented during COVID-19 period has been preserved.

Areto Imoukhuede

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Leaving Langdell and Resurrecting Socrates Online

This paper embraces a critical pandemic pedagogy as the successor to the traditional pedagogy that Christopher Columbus Langdell famously standardized in U.S. legal education – the Socratic Method. The paper suggests the use of technology and online teaching adaptations to make legal education more accessible and advance what I have previously framed as the international human right to education.

The Socratic method is modeled on the legendary teaching pedagogy of the ancient Greek philosopher, Socrates. We know from the histories and from the writings of his student, Plato, that Socrates would question his students about any number of matters for days, months, or even years. Applying this nearly infinite Socratic dialogue would be nearly impossible in a traditional law school classroom. Langdell's version of the method that has become the tradition, does retain the practice of having the instructor ask a series of questions to a classroom of students with little to no direct indication from the instructor as to whether the responses are correct.

While the classroom approach of the Socratic method is frustrating for all students; the harshest impact is on students who do not have a legal background. The traditional pedagogy reinforces problematic class and power dynamics by setting up as natural and inevitable the disproportionate success of students coming from lawyer families or from related social classes.

This paper suggests the possibility of resurrecting a purer form of what Socrates intended. Leaving Langdell can advance equity and inclusion by intentionally applying a critical pedagogy to the online learning platforms that were popularized during the pandemic. This critical pandemic pedagogy encourages active and authentic engagement using inclusive learning modalities. These modalities include but are not limited to the asynchronous recordings and discussion boards that effectively realize the long-dreamed of *infinite Socratic dialogue*.

Thus, students who do not enter law school already conversant in Legalese - the language of the law - can immediately be fully included and engaged in high level online discussions. Privilege is flattened. Full and equal access to higher education for all can begin to be realized.

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An Analysis of South Africa's Constitutional and UNCRC-Imposed Obligations to Achieve Children's Socio-Economic Rights: A Critique

Children unquestionably require extra protection due to their heightened susceptibility to human rights violations brought by, among other things, by socioeconomic distress, racial unrest, and war. In South Africa (SA), where there is such a significant degree of debilitating poverty and the legacy of apartheid has spawned a wide range of socioeconomic maladies in our sharply divided society, this is actually the critical situation. These ills have a particularly harmful and immediate impact on children.

It is alarming how many children live in poverty in SA. In South Africa, it's estimated that between 60 and 75 percent of children live in poverty. Children suffer negatively from high rates of HIV infection and AIDS-related fatalities among caregivers.

The UN Convention on the Rights of the Child (UNCRC) covers social, economic, and cultural rights as well. SA is required by law to implement the UNCRC's provisions relating to children's rights after ratifying it in June 1995. The UNCRC had a significant role in shaping and organizing the socioeconomic rights and corresponding obligations to children in the South African Constitution. The interests of children in SA are significantly protected by provisions in the Constitution and obligations under the UNCRC.

This paper evaluates South Africa's compliance with its constitutional and UNCRC-imposed commitments to realize the socioeconomic rights of children.

John Kleefeld

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**Spatiotemporal Influence of Judicial Decisions:
The Case of *Donoghue v Stevenson***

It is well known that some cases—typically called “landmark” or “foundational” cases—disproportionately influence the law’s development. But how can we measure that influence: (i) in a given jurisdiction or across multiple jurisdictions; (ii) across different court levels (e.g., trial, mid-level appeal, final appeal); (iii) in comparison to other the influence of other cases; and (iv) over time? This paper reflects an up-to-date effort to do such a “spatiotemporal” analysis with the landmark decision of the House of Lords in *Donoghue v Stevenson*. The primary method is citation analysis. The aim is to collect all citations to *Donoghue*, anywhere in the world, and to organize, represent, and make this data freely available for further quantitative and qualitative analysis. The hope is that lessons learned from this legal research will enhance the practice of citation analysis and help to better understand and show how legal cases are adopted, transmitted and modified over time and across different countries and legal systems.

Emmanuel Kojo Nartey
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A Critical Assessment of Corporate Human Rights Violation and Environmental Damages under Tort Law

The main aim of this article is to better understand better the challenges that exist for corporate human rights accountability and environmental damages, as well as the initiatives likely to be most effective for the enforcement of human rights and environmental law, given the diversity of legal structures, traditions and approaches in different jurisdictions around the world. The research in this article attempts to analyse the concept of liability by critically examining the definitions of human rights law and tort law as well as examining the problems associated with the concept of corporate obligation, both in its legal and everyday use, with a view to developing a corporate liability mechanism under tort law. The research draws on empirical information from a wide range of general and legal literature on the concept of accountability. It examines the functioning of the general and legal concept of accountability, human rights law, tort of negligence, accountability systems, and relevant regimes. Adopting this approach to corporate liability allows the research to lay down the theoretical concept for the study by focusing on the substantive legal and practical issues that have an impact on the effectiveness of accountability and judicial mechanisms in achieving corporate accountability and effective remedy in cases of business-related human rights exploitations. There is a particular emphasis on the legal definition of accountability under public international law. This is because the definition is important in the recognition of an effective international legal framework on business and human rights as an essential step towards protecting victims' access to remedy for corporate wrongdoings. It will also serve as a legal instrument that could clarify the obligations of corporations to respect human rights.

Jorge Nunez

Reader, Manchester Metropolitan University, UK

Cosmopolitanism and State Sovereignty: A Multidimensional Approach

This paper proposes a reconceived way to assess the relationship between cosmopolitanism and sovereignty. Often considered to be incompatible, it is argued here that the two concepts are in many ways interrelated and to some extent rely on one another.

By introducing a novel theory that includes the notions of pluralism of pluralisms and multidimensional analysis, the paper presents a detailed philosophical analysis to illustrate how these notions might theoretically and practically work together. This theoretical inquiry is balanced with detailed empirical discussion highlighting how the concepts are related in practice and to expose the weaknesses of stricter interpretations of sovereignty which present it as exclusionary.

Finally, the paper looks at territorial disputes to explore how sovereignty and cosmopolitanism can successfully operate together to deal with global issues.

Vladimir Orlov

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Dispositivity in Russian Business Law

The principle of dispositivity is developed on the basis of the concept of party autonomy that is characteristic of civil law regulation that covers business activities and is realized through the application of, in addition to directly applicable imperative norms, dispositive norms that imply the freedom of the parties to perform (to acquire, realise and dispose of) their rights on their own discretion. Particularly in respect of the civil-law relations the law provides the parties with large possibilities to determine their relations in accordance with their autonomy of will and in default of such determination offers the applicable rules. Essentially important in realization of the principle of dispositivity in the civil law are also initiative norms through the application of which the civil law relations emerge, change and cease.

Related particularly to the contract and corporate law regulation in Russia, the traditional totality of the legislative law has been challenged in the pragmatic approach supported by the Russian highest judicial body. According to the Ruling of the Plenum of the Supreme *Arbitrazh* Court of 2014, the norm that determines the rights and obligations of contractual parties but does not include the expressed provision of its dispositivity or imperativity, ought to be recognized as dispositive or imperative in accordance with the interpretation of its aims, and this indicates of favourable attitude towards business activities as well as of reasonable implementation of the pragmatic attitude that is characteristic to common law to Russian law. In particular, the favouring of the principle of dispositivity in respect to business law regulation, by the concentration of the valuation of the dispositivity of a legal norm in the sphere of successive control, instead of previous control, actually promotes the real freedom of business activities, and makes the regulation flexible. This is particularly important for small and family enterprises that are very common in Russia.

Harsh Pathak

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**Armed Conflict and Climate Change -
Research Study on the Impact of Climate Change in the
Himalayas with Special Reference to the Water Treaties**

Climate Change is emerging as one of the greatest existential crises the planet has ever faced. The effects of the rapidly increasing temperature are all the more relevant in the fragile biosphere regimes of the world, such as the Himalayas, which are the source of freshwater resources for two billion people in the countries of East, South-East, and South Asia. The recent rise in global temperature threatens to destroy this intricate balance of water sharing of transboundary rivers, which maintains a degree of harmony between the countries in this region, leading to a scarcity of water resources in an already parched land. This has the potential to create a conflict that could have devastating effects on humans as well as flora and fauna of this region. Currently, there are very few institutional bodies and multi or bilateral treaties regarding the protection of the Himalayas and the regulation of the flow of transboundary rivers.

The Paper analyses how the Indus Water Treaty is threatened due to erratic weather phenomena, and the author also seeks to highlight the role of the World Bank as a guarantor. Furthermore, this study undertakes a comparative analysis of the various bilateral transboundary river water-sharing treaties in this region. Emphasis is drawn on how a better mechanism can be formulated to strengthen these treaties by creating a permanent body for solving transboundary water disputes in the Himalayas under the supervision of the U.N.

Lastly, the Paper emphasizes the need to immediately protect the Himalayan Region and how it can be achieved through a collective process of demilitarization and cooperation among the states in these regions and by strengthening bodies such as the International Centre for Integrated Mountain Development (I.C.I.M.O.D.). The I.C.M.O.D. is an agency foster greater collaboration among the Himalayan Nations, especially concerning scientific research relating to the protection of the mountain range. The authors here also look into the concept of designating the entire region as a Global Environmental Free Zone and analyze how such a proposition will be the ideal way to protect the grandeur of the Himalayas and prevent the ranges from being subsumed under the ill effects of climate change.

Larissa Pochmann da Silva
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Class Actions and the Economic Analysis of Law

Class actions are frequently associated in Latin America to remove barriers for providing access to justice. They are pointed out as an adequate and efficient procedure to guarantee access to justice, even when the individual demand is unable to carry out it properly.

One reason is, through a single class claim, several victims do not need to spend time and money to go to courts. Other reason that class actions can contribute to improve access to justice by not being restricted to borders, traces or geographic limits.

Also, the collective claims provide the protection of the interests of all who have been harmed or prevents them from becoming victims, regardless of their economic or social condition. It is also possible to protect groups, implementing social rights - and carrying out affirmative actions.

But class actions have an important effect on economic analysis of law. This research intends to analyse to relationship between class actions and the economic analysis of law.

Class actions are a relevant tool to procedural law and economic analysis of law are on focus. How class actions contribute to economic analysis of law?

One possible answer is they are an attempt to bring scale economies to bear on legal proceedings, by gathering interests that have a common base. Where individuals would not have brought suit because the damage they suffered is too small in regard to the minimal cost of a lawsuit, class actions protect legal rights and show the market that infringe law is not a positive behavior.

The main idea of this research is to fix how class actions can contribute to economic analysis of law, bringing judicial economy, effective of legal rights modifying market`s behaviors and provide efficiency to civil justice.

Jill St George
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Constitutional Change in Barbados – From Saving to Abolishing

This paper considers the change in use of the Barbados Constitution, with focus on three recent cases which have impacted the human rights landscape of the country. Accompanying independence from Great Britain in 1966, the Constitution of Barbados has historically enabled the effect of coloniality to continue into independence through the operation of the ‘savings clause’, a provision providing protection to pre-independence laws incompatible with the Constitution. However, notably since December 2022, three cases -concerning the offences of buggery and wandering and access to trade union membership -have seen the Constitution utilised to guarantee human rights and change the legal landscape. This paper will chart this change in use, analysing the three recent constitutional case authorities and considering possible future utilisation.

Elena Emilia Ștefan

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Romania

Climate Change - An Administrative Law Perspective

Given the astonishing speed at which society and nature are changing, the issue of climate change can no longer be analysed solely from a legal perspective, but also from an ethical one. It is important to address the phenomenon of climate change as it has become so widespread in recent years that we are now witnessing litigation involving not only individuals, authorities but also states. The occasion for our analysis is a news in the media according to which, in our country, in January 2023, the first action was brought before the contentious administrative court against the Romanian state for not adopting measures to combat climate change and this prompted us to know more on this subject. The theme is topical and relevant for both legal professionals and private individuals.

The scope of the study is to investigate the extent to which ethical values, such as respect and responsibility, are intertwined with legal analysis of environmental issues and can help us find a solution to mitigate damage caused by climate change.

Using methods specific to law, we will underline the conclusion of our paperwork, namely that the focus should be shifted to respect and responsibility, i.e. to prevention towards nature from everyone's side: citizens, international organisations, states.

Henda Steyn

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A Proposed Legal Framework for Implementing and Regulating Financial Therapy in the South African Financial Planning Law Landscape

South Africa has made significant strides in the development and regulation of financial planning since the establishment of the Financial Planning Institute of Southern Africa in the 1990s. Today, the country has a robust regulatory framework that governs financial planning, promoting transparency, accountability, and professionalism in the financial planning industry. The regulatory framework includes the Financial Advisory and Intermediary Services Act (FAIS Act) and the Twin Peaks model of financial regulation, which promotes financial stability, consumer protection, and market efficiency.

However, challenges still impact how individuals engage with money in South Africa. Historical, cultural, and social circumstances lead to biases and financial anxiety. Low levels of financial literacy and education also lead to substandard financial practices. The COVID-19 pandemic has further exacerbated these issues, causing increasing financial stress for many South Africans, which can be detrimental to their overall health and mental well-being.

To ensure effective individual financial planning, South African financial advisors must adapt to the client's level of financial understanding, incorporate their traditional beliefs and cultures, deal with racial and other biases, and mitigate financial anxiety. There has also been a growing focus on financial inclusion, particularly in the low-income and rural sectors. The Financial Sector Conduct Authority (FSCA) has introduced regulatory measures to ensure that financial products and services are accessible and affordable to all South Africans. The Financial Planning Institute (FPI) has developed financial literacy programs to promote financial education and empowerment.

There is a growing need for financial therapy in South Africa to address these challenges. Financial therapy is a process that helps people think, feel, communicate, and behave differently with money to improve overall well-being. Financial therapists use evidence-based practices and interventions to help individuals overcome self-sabotaging behaviour and transition into a new and secure financial environment.

However, there is currently a legislative gap in this area that needs to be addressed to ensure that financial therapy is conducted professionally and ethically. It is essential to establish a governing body

and regulations to oversee the practice of financial therapy in South Africa. The governing body should establish a code of ethics that financial therapists must adhere to, including confidentiality and conflict of interest policies.

Incorporating regulations and legislation into the financial therapy industry will ensure that professionals provide high-quality services that meet specific standards. The governing body will ensure that financial therapists adhere to ethical and professional conduct, making financial therapy accessible and affordable to all South Africans.

South Africa has made significant progress in financial planning, but incorporating financial therapy into the financial planning industry can help bridge the gap in financial literacy, education, and practices. By taking these steps, South Africa can ensure that financial therapy is accessible, affordable, and high-quality, promoting overall financial well-being for all its citizens.

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Promoting Effective Refugee Protection in India: Balancing National Interests and International Obligations

This paper explores the situation of refugees in India, particularly Sri Lankan and Rohingya refugees who are seeking asylum in India and face the issue of statelessness due to the lack of a concrete refugee law in India. The Foreigners Act 1946 of India defines foreigners as individuals who are not Indian citizens and requires non-citizens to possess government-issued documentation. Failure to possess such documents exposes individuals to penalties outlined in section 14 of the Act, including potential imprisonment and fines. The Act also grants the government the authority to detain and deport foreign nationals residing unlawfully in India. Furthermore, the Citizenship Amendment Act, 2019 (“CAA”) addresses the plight of religious minorities, excluding Sri Lankan, Rohingya and other refugees, as it only applies to refugees from Afghanistan, Bangladesh, and Pakistan. The CAA allows eligible Hindu refugees who entered India before December 31, 2014, to obtain Indian citizenship. The absence of a concrete refugee law in India, coupled with concerns over the potential impact of the CAA on India’s secular constitutional fabric, has raised international apprehension. It is important to note that India is not a party to the Convention Relating to the Status of Refugees, 1951, and its 1967 protocol, limiting its refugee protection obligations. By analyzing relevant legal sources, judicial decisions and international standards, this paper aims to provide a comprehensive understanding of the legal complexities surrounding refugee protection in India and the implications of the CAA within the context of India's international obligations.

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Public Policy Conundrum in Private Wills

South Africa's public policy is infused with the constitutional values (particularly those contained in the Bill of Rights of the South African Constitution) which affirm the democratic values of human dignity, equality and freedom. These values have been used to give weight to the freedom of testation rule that a testator is free to divide and distribute the estate as he/she deems fit. In cases that involved charitable trusts set up by the testator that included discriminatory provisions, the freedom of testation has been pierced based on the public nature of the bequests, and the discriminatory provisions have been removed.

This issue has been further widened recently in court cases in South Africa when (female) descendants of the testators claimed that their disinheritance was unfair discrimination based on their gender. The court viewed the equality value as the heart of our public policy and decided in favour of the female descendants despite the contrasting value of human dignity and freedom of the testators. Even private dispositions are, therefore, now ruled by public policy considerations.

This issue emphasised the role that public policy still plays despite being hard to define in most jurisdictions. This may cause difficulties when certain values are seen as more important in the balancing act and could cause legal uncertainty. Courts have therefore tried to apply the constitution directly to circumvent the application of public policy directly based on its volatile nature. It can be useful, however, to have some form of a guideline on the role that public policy can play in private wills.

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**The Space Transportation Regime in China: Status Quo,
Shortcomings and Possible Ways Out**

Space transportation has gradually become an important transportation for China since the operation of China's space station. Moreover, the space commercial activities, such as space travel and commercial space launch, will promote the development of space transportation in China. This article adopts a case study of the evolution of China's space transportation over the past 50 years, while a comprehensive comparison between China and the USA, between China and ESA, and between China and Russia in the areas of space transportation and rule-making for regulating space transportation. This article argues that space transportation has become an integral part of the integrated transportation system because we do not only have land-space transportation, land-sea-space transportation, and air-Space Transportation. A careful review of the international and national legal framework for space transportation indicates that there are legal lacunae in the area of space transportation, while current international and national laws can provide some general principles for regulating space transportation in China. Under such circumstances, we propose that a comprehensive regime should be established to regulate space transportation in China, which at least addresses the issues regarding the land-sea-air-space integrated transportation system, Space cargo transportation, space passenger transportation, space transportation insurance and safety management, and emergency management of transportation accidents.

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**The Study on the Effectiveness of Arbitration Clauses in
International Commercial Arbitration –
From the Perspective of Contract Non-Formation**

This study belongs to a more specific project, aiming at exploring the issue of the validity of arbitration clauses in international commercial arbitration when the main contract is not established, and addressing the issue of determining the validity of arbitration clauses in transnational commercial disputes, so as to provide commercial operators, arbitrators or judges with guidelines and references for their ideas. This study is based on the classical jurisprudence of private international law, common law and international commercial arbitration, and then, based on the customs of international commercial transactions and the contents of the cases, it conducts legal doctrinal analysis, comparative analysis and case analysis. These legal norms and cases reflect, from different perspectives, that the arbitration clause itself has a considerable degree of independence and can normally be established independently of the main contract. The study points out that the determination of the validity of the arbitration clause has its own logic of determination, and it should also apply the process of determination of the contract, which includes the conditions of the voluntary agreement of the parties, the process of invitation and negotiation, and the true intention of the parties.

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