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Selected Issues in
Modern Jurisprudence

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Dedicated to the memory of

Dr. David M. Wood

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Introduction

David A. Frenkel

Jurisprudence may be defined as theories which are in the foundation of legal systems. When theories change, when positive law and legal relations change, Jurisprudence may change accordingly. It is necessary to learn and know historical or previous background in order to study and understand current or modern jurisprudence. Jurisprudence is not of one piece, and the diversity of legal systems and theories may make us think of different contemporary jurisprudences. We live in a world of mobility and increasing interconnectedness. Our age is an age when legal issues and problems cannot be solved locally but through intergovernmental cooperation. Traditional boundaries have become permeable. Changes in the political landscape caused reverberations of domestic and regional conflicts, as well as clash of religious and secular values. There is a need of a recalibration of legal concepts and a more international and more inclusive approach to legal discourse. However, there is a common denominator which may be the ground of Modern Jurisprudence.

This book offers a collection of essays to shed light on various issues in modern Jurisprudence. As diverse as they may look to the reader, they all deal with current significant issues.

The essays are revised versions based on selected presentations at International Conferences on Law, organised by the Athens Institute for Education and Research (ATINER) held in Athens, Greece. They were peer-reviewed and selected on the basis of the reviewer's comments and their contribution to the ongoing discussion of the respective issues.

The book comments with David Ray Papke's essay *Postmodern Decline? The Belief in a Rule of Law as a Tenet of American Ideology*. Papke asks whether the belief in a rule of law as a tenet of American ideology is still firm in the emerging postmodern society. He argues that popular sentiments as well as contemporary jurisprudence powerfully challenge the functionality and very attainability of a rule of law.

The second contribution is Alani Golanski's essay on *Why there is Widespread Nonmoral Theoretical Disagreement in Law*. The author argues that constraints existing in law by virtue of its institutional nature render nonmoral theoretical disagreement widely possible, and frequently actual. According to Golanski, theoretical disputes in law are best understood as nonmoral controversies over the standards for determining whether the existing legal materials are sufficiently "directed at" the present circumstances, and whether they provide a solution to the new matter with sufficient exactness. The author concludes that if it so, theoretical disagreement in law should not count against legal positivism.

Ronald C. Griffin's paper *Spying*, which is the third paper, begins with the finding in the Church Committee Report in the USA. It spotlights Edward Snowden's disclosure about the NSA, reviews pertinent laws about spying and parades some suggestions and recommendation to curb government excesses.

The next essay is *Creative Common Licences for Transmedia Storytelling Content*, written by Marco Aurélio Rodrigues da Cunha e Cruz and Andrea Cristina Versuti. They point out the sharp increase in the flow of information to the public. In the past, the legal protection of authorship of cultural property was based on a control system of space and movement. However, nowadays the content is mediated by different platforms in order to meet a greater number of viewers/consumers. The content is diluted within a new architecture of actors. One of the examples is transmedia storytelling. The reflection of the legal protection of authorship of cultural property in the 21st century leads to the proposal of Creative Commons that aims to create a cultural property of the universe that can be accessed or processed in accordance with the author's consent. The paper examines the possibility of an author of transmedia storytelling to protect his content by using a legal adaptation of the Copyright Act proposed in Brazil.

This leads us to the fifth essay *The Access to Information in MRCOSUR for Sustainable Development* by Gabriela Soldano Garcez. The authoress calls for full access to environmental information, as it is an implementation tool and the presupposition of public participation in environmental matters. She ponders the legislation which should guarantee access to such information on the MERCOSUR countries (Uruguay, Paraguay, Argentina and Brazil).

Kleoniki Ch. Pouikli's essay *The Role of the Environmental Principles in the Effective Protection of the Environment: The Case of the "Polluter Pays Principle"* follows the previous essay discussing environmental law. In his paper, Pouikli stresses the point that the universality of modern environmental issues leads to inevitable interplay of the environmental rules in international level. He argues that the "Polluter Pays Principle" – cornerstone both of International and EU environmental law constitutes the background for several instruments of environmental protection.

The seventh essay, *The Damage to the Environment: A View from Law*, written by Angelina Isabel Valenzuela-Rendón, the authoress argues that environment is a system that includes natural resources as well as social and cultural elements. The concept of damage to the environment is sui generis and is not treated as traditional damage. Environmental damage is both direct and indirect damage to humans. The consequences are not solely private but of global interest. Valenzuela-Rendón calls for more mechanism to solve environmental conflicts and questions that may arise.

Kamal Ahmad Khan's essay *The Protection of Minorities – whether a Neglected Field?* is the eighth essay in the book. It takes us to a hallmark of civilisation – protection of minorities. The minority problem has led to interventions, aggression and major conflicts between states. *In the past it was symbolised by the conflict between dominant and non dominant religious groups. Knowledge as power was in the hands of a small minority. The problem of minority as we know it today did not arise in those days. Minorities*

exercised power and very often the majority had to submit to the minority. The rise of secularism associated with the rise of nationalism further aggravated this problem by advocating the concept that the political boundaries should confirm to the national characteristics of the people. States tried to mould the people belonging to minorities in accordance with the religious, linguistic and cultural traits of majority through education, propaganda, political and legal action. Where the minority group resisted this policy, states resorted to extermination and expulsion of the minorities to assure national uniformity. The problems of minorities have attracted both national and international attention. Khan argues that in spite of different efforts the problem has so far been neglected either knowingly or unknowingly. In his essay he is dealing with different aspects of the concept of the term minorities and to evaluate and analyse both national and international instruments to protect the minorities.

The next essay is *Enhancing the Democratic Value of Governmental Accountability through Socio-Economic Rights Litigation: An African Regional Law Perspective*, written by Dane Ally. Various socio-economic rights are entrenched in the Constitution of the Republic of South Africa. Elections, for example, are an effective means to hold politicians accountable for failure to deliver on their promises. However, elections come about after the expiry of a five-year term. It is against this background and Ally asks whether this situation leaves South Africans and other individuals within its borders without an effective accountability mechanism during the periods between elections. To answer this question Ally considers the influence of South Africa's regional law obligations in developing its national law relating to the judicial enforcement of social and economic rights.

The issue of forming international criminal courts is the subject of the next essay *Diversification of the International Criminal Judiciary*, written by Tijana Surlan. Nowadays there are permanent international criminal courts as well as ad hoc international criminal ones. Surlan's main goal in this essay is to reveal whether there are any kind of lawfulness when establishing concrete type of a court and whether the international community is approaching to the model of preferably one universal permanent court or several ad hoc courts established on the case-by-case basis.

The eleventh essay in this book is Mariette Brennan's *Saying No to Chemotherapy: An Examination of the Aboriginal Right to Traditional Medicine*. Brennan examine the concept of an aboriginal right to health. It starts by defining the term aboriginal right and discuss the test used to establish such a right. The paper is concluded with a discussion on how the aboriginal right to health was employed in this context of medical treatment.

Whitney Rosenberg's essay *The Illegality of Baby Safes as a Hindrance to Women who want to relinquish their Parental Rights* deals with the problem of abandoned babies. In most legal systems abandoning a child is seen as a crime; nevertheless some systems allow legal abandonment that goes beyond giving the child up for adoption. Rosenberg examines the intricacies of these laws and concludes by indicating how introduction of "baby safes" in South Africa may save lives of hundreds of babies a year.

The next issue is Gender. Adoración Pérez Troya wrote the next essay, *Improving Gender Balance among Directors of Companies. A Proposal for a European Directive and Recent Advances in Europe*. The essay explores recent legal measures adopted in Europe to improve gender balance amongst directors of companies. It focuses on the Proposal for a European Directive on female board members and it refers in brief to different legal measures adopted at national level in many Member States of the European Union. Pérez Troya argues that the approval of the proposed Directive should be considered as an urgent issue as the equality between genders is one of the Union's founding values and core aims under the Treaty on European Union. Moreover, not taking advantage of the skills of highly qualified women is a waste of talent that Europe can no longer afford. For these reasons the “flexibility” admitted by the compromised text of the proposed Directive of the EU seems excessive and it makes it difficult to understand why women should be less equal in some European member states than in others.

The fourteenth essay is *A Renegotiation of Status? Neo-tribal Sociality in the Barristers' Profession in England* written by Anna Chronopoulou. Chronopoulou examines the ways in which the Maffesollian theory of neo-tribal sociality challenges the main characteristics of legal professional identity at the English Bar. There are two main reasons why the notion of neo-tribal sociality is being deployed in this essay: First, it comprises issues of consumer based lifestyles and secondly, neo-tribal sociality takes into account more sensuous forms of cultural practices of consumption. The essay exposes different aspects of the organisational context of the English Bar. The use of the notion of neo-tribal sociality in the study of the English Bar resurfaces hidden aspects of legal professional identity, which could potentially amount to a renegotiation of status of a small fraction at the English Bar. Chronopoulou reveals aspects of a new kind of legal professional identity at the English Bar suggestive of elements of neo-tribalism. These claims are supported by a thorough examination of a small sample of advertising material of some sets of Chambers in England.

The last essay in this book is Jorge Emilio Núñez *Sovereignty Conflicts and the Desirability of a Peaceful Solution: Why Current International Remedies are not the Solution*. The essays highlights the main remedies applied at international level and assess why it is reasonable to doubt the value of their application. Núñez argues that although they may be the answer for some sovereignty conflicts, they present, for the reasons he shows in this paper, a certain degree of uncertainty that make us doubt about their value. He argues that there is a need for a peaceful solution that the reviewed international remedies cannot offer. What we need, according to his argument, is a solution that no party may reasonably reject, whereas what we have is existing solutions that one or more parties may not accept.

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