

NEW CHALLENGES OF
THE LAW
IN A PERMEABLE WORLD

Edited by

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Introduction

David A. Frenkel

We witness increasing interconnectedness of issues, internationalisation of flows of goods and movement of labour, intergovernmental cooperation, new attitudes to personal rights and meaning of family, including human rights, as well as changes of values, moral principles and ethical conceptions. We live in a pervious world. Traditional boundaries have become permeable. One of the great challenges of our time is the response of the law to current developments.¹

The authors of the collection of essays offered in this book seek to analyse some of these challenges.

The essays are revised versions based on presentations at the 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 reviewers' comments and their contribution to the ongoing discussion of the respective issues. As diverse as the essays may look, they all deal with issues that are of current significance.

The book commences with **Michael P. Malloy's** essay *Interdisciplinarity:*

Classic Crossover Cases and Effective Law Pedagogy. The author examines one aspect of interdisciplinary pedagogy that is often overlooked – the intersection of disciplines by means of a shared artifact or source. Within the overall discipline of law studies, one may develop an interdisciplinary approach to, for example, specialties such as constitutional law and financial services law by focusing on their intersection in classic, authoritative cases that affect both.

The second contribution is **Ronald C. Griffin's** essay *The Rock: The Role Water Plays in Our Lives.* This essay chronicles what men have done in the past about water, forward thinking water management practices, and feuds and settlements between nations about water.

The following three essays are closely related and deal with children and family issues calling for the response of the law to current developments and new values relating to children rights and meaning of family. The authors concentrate in the Brazilian law, but the themes are current and controversial in many other jurisdictions.

The third essay is *The Legal Possibility of Adoption by Homoaffectional Couples* authored by **Michely Vargas del Puppo Romanello** and **Jose Geraldo Romanello Bueno.** The authors aim to clarify the legal possibilities of adoption by homoaffectional couples, through a search and examination of legal literature, analysing the principles of Dignity of the Human Person, Equality or Isonomy, the Best Interest of the Child and Adolescent, as well as the legal value of affection, Human Rights, and other constitutional principles. The theme is current and controversial in many jurisdictions due to resistance in

¹Frenkel, D.A. & C. Gerner-Beuerle (2019). 'Introduction' in D.A. Frenkel & C. Gerner-Beuerle (eds.) *Challenges of the Law in a Permeable World.* Athens, Greece: Atiner, at 1.

admitting the rights of adoption to homoaffective couples, as our society is marked by a prejudiced and discriminatory cultural and legal consciousness.

Pedro Vinícius de Fáveri and **Jose Geraldo Romanello Bueno** are the Authors of the fourth essay *Paternity Denial in relation to the Principle of Affectiveness*. The main goal of this essay is to discuss the aspects of paternity denial in relation to the principle of affectiveness. Initially, the essay deals with the transformations of family law and the current notion of the concept of this right, introducing the basic principles to understand the correct judgment in the procedural demands of paternity denial. It is necessary to study the present theme as judicial demands are increasing the emphasis of the socio-affectiveness bond before the biological one.

The fifth essay is *Anonymous Childbirth and the Protection of Personal Law* authored by **Jose Geraldo Romanello Bueno** and **Michely Vargas del Puppo Romanello**. The theme of anonymous birth motivated the proposal of two law projects in the National Congress in Brazil, in order to regulate this matter. There is much doctrinal discussion on the matter, since the adoption of the law already provides for the possibility of the mother to give her child up for adoption, which would generate a legal contradiction to the approval of Anonymous Childbirth Act. In this essay the right to genetic origin and the right to state membership are discussed as well.

The sixth essay is *Cross-Border Conversions of Companies within the EU: The Lithuanian Example* authored by **Lina Mikalonienė**. The authoress, identified in the light of the case law of the Court of Justice of the European Union, the regulatory-related difficulties for voluntary inbound and outbound conversions of companies that can be encountered under Lithuanian law and evaluates whether the Lithuanian legal framework ensures smooth corporate mobility within the EU.

Graeme Lockwood authored the seventh essay *Workplace Monitoring and Surveillance: The British Context*. The internationalisation of movement of labour causes the need to know better to workplace monitoring in different jurisdictions. The author reviews the monitoring of employees by their organisations across a variety of sectors and industries in British workplaces. The contribution of the paper is to approach empirically the reasons that employers give for engaging in monitoring and how employees assess the practice. Valuable distinctions are raised in terms of different employee attitudes to surveillance within and outside the workplace,

The next essay is *Legal Sources and Interpretation in Russian Civil Law* by **Vladimir Orlov**. The author describes the main principles of the continental law tradition. The dominance of the legal positivist approach, and consequently, the overemphasised role of the statutory law and dogmatic interpretation of the legal material are, in general, specific for Russian law, whereas the efforts towards the globalisation of law in Russia are still more declarative than real. Nevertheless, the pragmatic approach, enforced in the judicial practice, and the recognition of this and custom as legal sources as well as the equity consideration in the legislation, have been introduced by the recent novelties to the Civil Code.

Opening Argentina to Public-Private Partnerships: Opportunities and Risks for Government Entities and Private Investors is the ninth essay authored

by **Ulrich Schüle, Franz Liening-Ewert, Daniel Schäffer** and **Edith Zeppenfeld**. Since the presidential elections in November 2015, Argentina's economic system has shifted back to a more neo-liberal paradigm. After more than 15 years of 'neodesarrollismo' characterised by large scepticism towards inward FDI, the country opens up to international investment into infrastructure. With a new law adopted in early 2017, Argentina promotes public-private-partnership (PPP) projects. The expectations in Argentina vary from the belief that inward FDI will significantly contribute to the modernisation of infrastructure to the fear that PPP projects will surrender the country to the interest of international capital.

Lavinia-Olivia Iancu is the authoress of the tenth essay *The Opening of the Insolvency Procedure: Theory v Practice*. The exit from the market of debtors, who no longer deal with maturing payments, is legally regulated in most countries around the world. The first modern regulation of the insolvency procedure in Romania is found in 1995 and it suffers to date many modifications meant to keep the insolvency procedure in direct connection with the socio-economic reality. The special attention paid by insolvency lawmaker, but also its continued development over 20 years, would require a clear procedure for all parties involved. The unit of jurisprudence in legal matters is an imperative of any state. The lack of consistency of judicial practice generates an undesirable phenomenon, the insecurity of the legal circuit translated into the decline of the Romanian citizens' confidence in the act of justice. The law must have the same meaning for all.

The eleventh essay is *Personal Data Transfer to Third Countries – Disrupting the Even Flow?* by **Danijela Vrbljanac**. The authoress analyses the bases and conditions for transfer of personal data to third countries, novelties introduced by the new General Data Protection Regulation and pinpoints the matters which might present the greatest challenge for efficient data protection and states that the area of EU law is surrounded by much controversy.

The final essay in this book is *Current Issues of Czech Road Traffic Law in the Context of Jurisprudence and Road Safety* by **Jan Scheuer, Nikola Jílková** and **Radislav Bražina**. Their conclusion is that case-law can have rather indirect influence on road safety but depending on its position it can clearly influence level of road safety (improvement or impairment). They demonstrate that road safety arguments are essential for assessment of constitutionality of legal measures improvement of road safety.

Many of the debates analysed are ongoing and the policy and interpretations brought up in the essays will undoubtedly contribute to future course of debates. I hope the reader 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.

The views expressed in the essays in this book are the authors' and do not represent nor are intended to represent, the views of any other individual or body.

