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A Current Anthology of Law

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Table of Contents

List of Contributors 5

Introduction 9
David A. Frenkel

Russia-Ukraine Economic Sanctions: Legal Responses to a Crisis 15
Michael P. Malloy

The Concept of Dignity: Labour Relations and the Struggle for Recognition in Brazil 23
Gerson Leite de Moraes & Jose Geraldo Romanello Bueno

Digital Markets Act (DMA) and Digital Service Act (DSA): New Rules for the EU Digital Environment 33
Maria Luisa Chiarella

Legal difficulties for the use of Biometric Data in Artificial Intelligence-based recruitment procedures 59
Claudio Sarra

The Taxation of Cryptocurrency 75
Alexander R. Szívós

The Access Conditions of the Natural Person to the Insolvency Procedure in Romania 83
Lavinia-Olivia Iancu

Proactive Intelligence-Led Policing Shading the Boundaries of Entrapment: An Assessment of How Common Law Jurisdictions have Responded 99
Ger Coffey

Legal Aspects of Corporate Governance in Russia 123
Vladimir Orlov

Minority Shareholders' Right to Request the Postponement of General Meetings of Joint Stock Companies in Turkish Law 143
Derya Güvenir

Transnational Class Actions: The Canadian Experience and the Improvement of Access to Justice in Latin America 153
Larissa Clare Pochmann da Silva

Speedy Dispensation of Justice: Lagos Multi-Door Court House (LMDC) 183
Chinwe Egbunike-Umegbolu

Clash of Protection and Limitation: Putting a Liability Limit on Human Life? 193
Aisegül Akkoyun

Violence Against Women and Domestic Violence: The European Commission's Directive proposal **205**
Marta Picchi

Self-Defence and Domestic Violence: An Analysis of Turkish Criminal Law Practice **219**
Selin Türkoğlu

The Rohingya Crisis: A Critical Analysis of the United Nations Security Council and International Human Rights Law **249**
Emmanuel K Nartey

The Role of International Law in the Adjudication of the Right to Adequate Housing in Zimbabwe **273**
Priscilla Tariro Moyo

Use and Abuse of Social Media in Myanmar between 2010 and 2022 **289**
Robert Smith & Nucharee Smith

A History of the Common Law Double Jeopardy Principle: From Classical Antiquity to Modern Era **309**
Ger Coffey

The "One in, One out" Approach in the New Communication on Better Regulation: A Brief Reflection **335**
Marta Picchi

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Introduction

David A. Frenkel

This book offers a selection of essays which shed light on various issues in the field of Law.

The essays are revised versions based on presentations at the 2021 and 2022 International Conferences on Law organised by the Athens Institute for Education and Research (ATINER) held in Athens, Greece. The essays in this volume have been selected after a process of blind-review on the basis of the reviewers' comments and the essays contribution to the ongoing discussion of the respective issues.

Despite the pandemic, the meetings were successful, though most of the papers were online presentations. Lawyers and other scholars who are interested in law and legal matters from across the world have proved their willingness to get together and discuss and talk about legal issues.

Traditional boundaries have become permeable. We live in a transparent, influenceable and pervious world. The response of the law and the legal systems to current developments including the issues and questions caused and raised by the Covid-19 pandemic is one of the great and serious challenges of our time. The authors of the essays collected for this anthology seek to analyse some of these challenges.

The book commences with **Michael P. Malloy**'s essay *Russia-Ukraine Economic Sanctions: Legal Responses to a Crisis.* The use of economic sanctions – governmental restrictions on the economic activity of other nations, their officials, and often their general population – is an increasingly prevalent feature of contemporary international law and practice. Unavoidably, sanctions have a significant impact on the socio-economic interests of many individuals and organizations. Taking the recent developments with respect to the Ukraine crisis as a focus, the author argues that persons operating in a transnational context cannot rest upon the assumption that the imposition of sanctions is an extraordinary and unusual event that is unlikely to have an impact upon their rights and obligations. Analysing the details of the current sanctions, it argues that, while sanctions have specific, technical objectives that create heightened risks for those involved in transnational transactions, sanctions alone are not capable of resolving the current crisis.

Gerson Leite de Moraes & Jose Geraldo Romanello Bueno have authored the second essay *The Concept of Dignity: Labour Relations and the Struggle for Recognition in Brazil.* Their work intends to make a historical and philosophical investigation of the concept of dignity. Since Ancient Rome, the Latin term *dignitas* has always been linked to republican ideas. However, it was in the Middle Ages that legal science, closely linked to theology, formulated one of the pillars of the theory of sovereignty, namely: the perpetual character of political power. Dignity was then emancipated from its bearer and converted into a fictitious person, a kind of mystical body adjacent to the real body of the magistrate. In Modernity dignity is based on autonomy, presupposing the presence of a moral

legislating will, in which every human being needs to feel submitted to reasonable and internally coercive moral demands. The concept of dignity appears in the Constitutions of many countries, including the Federal Constitution in force in Brazil since 1988. Despite being embodied in national legislation, dignity ends up suffering setbacks by interference from the political world. Critical Theory and the works of Axel Honneth are fundamental when considering the precariousness of labour relations in Brazil and the possibility of overcoming these obstacles by the working class through the struggle for recognition.

The third contribution is **Maria Luisa Chiarella**'s essay *Digital Markets Act (DMA) and Digital Service Act (DSA): New Rules for the EU Digital Environment.* Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector sets clear rules for large online platforms. It aims to ensure that no large online platform that is in a “gatekeeper” position - to many users - abuses that position to the detriment of businesses wishing to access those users. The most innovative elements are the introduction of the legal figure of the “gatekeeper” and the provision of specific duties imposed on the same. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services 'introduces a common set of rules on intermediaries' obligations and accountability across the single market, aiming to ensure a high level of protection to all users. The authoress analyses the new provisions introduced by the Digital Service Package in the framework of market regulation policies.

The author of the fourth essay *Legal difficulties for the use of Biometric Data in Artificial Intelligence based recruitment procedures* is **Claudio Sarra**. As the author points out, until recently the use of biometric data was focused on the problem of establishing personal identity on the dual form of "biometric identification" and "identity verification" This limitation is reflected also in regulations, especially in the European framework based on the General Data Protection Regulation (GDPR). However, the advent of the "data society" radically changed the picture. Images, videos, and software instruments to catch and analyse physical traits and behaviour are making biometric data extraction and usage much easier. Biometric data can now be exploited for uses that go well beyond unique identification. The case of recruiting is paradigmatic, since new possibilities are now open to improving the procedures by means of Artificial Intelligence (AI), but they must face the uncertainties in the regulation. Thus, the author starts by giving a short reference framework about biometrics, to be followed by discussion of the relationships between the European GDPR about biometric data and national laws, taking the Italian case as benchmark. Then the author focuses on a specific point in the new European Proposal for a Regulation on Artificial Intelligence, as far as biometric data are concerned, and ends his essay suggesting an interpretative coordination between these sources of law, offering some concluding remarks.

The Taxation of Cryptocurrency is the title of the fifth essay authored by **Alexander R. Szívós.** As the author explains, the tax treatment of cryptocurrencies varies across the globe. The current ecosystem induces contrary interpretations, misconceptions, and unclear definitions from both the authorities' and taxpayers'

sides. A significant size of income from crypto investments remains invisible to tax authorities, which are currently struggling to come to grips with the exponential growth in digital assets. The aims of the essay are to present the Hungarian and some other unique country-level tax treatments with the intention of providing a glimpse of the current situation, alongside examining the latest achievements towards creating a clear tax framework for crypto-assets.

Lavinia-Olivia Iancu is the authoress of the sixth essay - *The Access Conditions of the Natural Person to the Insolvency Procedure in Romania.* Since the beginning of 2020 in Romania, the COVID-19 pandemic has been exhibiting its negative effects. As expected, the hardest hit were the ordinary citizens who, overnight, awakened to reduced wages or downright joblessness. Moreover, the year 2021 has brought price increases in all areas. The over-indebtedness of a large population of individuals has become the norm under the above conditions. The insolvency proceedings law for individuals seemed to be a solution for their over-indebtedness predicament. Nonetheless, the authoress has found that this law is not performing at its true potential. In addition to a complex application form requested of the simple citizen, the authoress contends that the access conditions to the insolvency procedure of the natural persons can be simplified and improved. Given the economic conditions in Romania, along with the reduction in the living standard, the legislator should give priority to possible legislative solutions that will offer the indebted a fresh start.

The seventh author **Per Coffey**'s essay is *Proactive Intelligence-Led Policing Shading the Boundaries of Entrapment: An Assessment of How Common Law Jurisdictions Have Responded.* Law enforcement agencies have adapted their detection and investigative strategies in accordance with proactive intelligence-led policing of suspected offenders that include surreptitious undercover methods. While such measures are necessary and proportionate to safeguard society from harm caused by offenders, some forms of proactive policing methods could be regarded as entrapment. Criminal justice systems have typically responded to allegations of entrapment with judicial discretion to grant a stay of the prosecution for an abuse of the courts process, relying on judicial integrity and the imperative of constitutional principles and international human rights standards being adhered to by courts of justice. The author evaluates the judicial responses to successful pleas of entrapment in foremost common law jurisdictions underpinned by constitutional principles of due process and international human rights standards in accordance with the rule of law.

Legal Aspects of Corporate Governance in Russia is the title of the eighth essay authored by **Vladimir Orlov.** Corporate governance in Russia is subject to the present civil law provisions. A detailed description of both the primary legislation as well as the subsidiary one which deal and supervise corporate governance in Russia is given in the essay. The author points out that characteristic for the liability of executives and representatives of company is, that their liability is to be realised simply at the moment when their duty to act in good faith and reasonably is violated**.**

The ninth essay, *Minority Shareholders' Right to Request the Postponement of General Meetings of Joint Stock Companies in Turkish Law* has been authored

by **Derya Güvenir**. One of the most significant outcomes of the majority-based management approach in joint-stock companies is the conflict of interests between the majority and the minority shareholders. The main function of the right is to provide an additional opportunity to inform the minority shareholders about the financial management of the company and its outcome. On the other hand, due to the method of exercise of the right, it has been opened to discussion in the context of the prohibition of abuse of rights in Turkish legal doctrine. The aim of this essay, following a general overview of the minority shareholder rights in Turkish joint-stock companies, is to exclusively evaluate the minority shareholder's right to request the postponement of the general assembly meeting and its possible implications regarding the prohibition of abuse of rights.

Larissa Clare Ponchmann da Silva, the authoress of the tenth essay - *Transnational Class Actions: The Canadian Experience and the Improvement of Access to Justice in Latin America,* analyses how the Canadian experience of class actions could contribute to the improvement of access to justice in Latin American, in a scene that damages are no longer restricted to state borders. For that, the authoress clarifies the concept of transnational class actions and how it could improve the prevention and reparation of damages that are no longer restricted to countries' borders. Based on the Canadian experience, proposals are made for the admissibility and enforcement of transnational class actions in Latin American context.

Speedy Dispensation of Justice: Lagos Multi-Door Court House (LMDC) authored by **Chinwe Egbunike-Umegbolu** is the eleventh essay. Since it was enacted into law, its relevance has developed due to its unique way of linking cases to appropriate forums for appropriate settlements. The authoress evaluates the philosophy behind the birth of the LMDC in Nigeria and the underlying elements of the LMDC Law. The essay employs a socio-legal and comparative approach. It concludes on how effective the LMDC has been from its inception to date, the differences or contributions they have brought in terms of speedy dispensation of justice.

The twelfth contribution is **Aisegül Akkoyun**'s essay *Class of Protection and Limitation: Putting a Liability Limit on Human Life?* The author examines the limitation of liability posed by the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, concerning the carrier and claimant. It explores issues of the limitation of liability for the death or personal injury to passengers that have been raised by the 2002 Protocol. The essay also debates that the limitation of liability, as stipulated in the Convention, will need to be addressed in parallel with developments in the maritime industry. The author concludes that the Convention's ratification may consider the abolition of the limitation of liability regulation to address its unfair applications.

Marta Picchi is the authoress of the thirteen essay - *Violence Against Women and Domestic Violence: The European Commission's Directive proposal.* The European Commission proposed to enshrine in the law of the European Union minimum standards to criminalise certain forms of violence against women; protect victims and improve access to justice; support victims and ensure coordination between relevant services; and prevent these types of crimes from happening in

the first place. In particular, the Commission's proposal would make it possible, on the one hand, to surmount the gaps existing in some Member States and, on the other hand, to standardise the various national legislations with a single discipline valid in all the countries of the European Union. The authoress focuses on the contents of the European Commission's proposal by highlighting and reflecting on the key points.

The authoress of the fourteen essay, **Selin Türkoğlu,** in her essay *Self-Defence and Domestic Violence: An Analysis of Turkish Criminal Law Practice,* states that the question how to assess the criminal liability of the abused woman who kills her abuser while in his sleep or in a state of unconsciousness has become a salient topic of debate in recent years. However, although there is a tendency to consider these acts within the context of self-defence with the impact of "the battered woman syndrome", the debate still persists. In her essay the authoress examines how such cases are treated in Turkish law practice in light of three decisions of The Court of Cassation.

Emmanuel K Nartey has authored the fifteenth essay - *The Rohingya Crisis: A Critical Analysis of the United Nations Security Council and International Human Rights Law.* The author reviews the human rights violations against the Rohingya people in 2017 and assesses the effectiveness of accountability under the United Nations Security Council (UNSC). It is concluded that under the principles of ethics and integrity in international law and human rights law, there should have been investigations into the crimes committed against Rohingya Muslims in accordance with the judgement given by the ICC's Pre-Trial Chamber. The author's view that the UNSC's failure to carry out its obligations was solely due to Russia's political ties with Myanmar, which also resulted in Russia using its veto power and obstructing the UNSC's statement on the situation. In this light, the essay affirms there is a need to create a better framework to resolve issues such as the Rohingya genocide and the Russian invasion of Ukraine and any complications that may arise in the future.

The sixteenth essay authored by **Priscilla Tariro Moyo** is *The Role of International Law in the Adjudication of the Right to Adequate Housing in Zimbabwe.* The right to adequate housing has been codified in major international treaties. Zimbabwe ratified the International Covenant on Economic Social and Cultural Rights (ICESCR) in 1991 meaning that it is under a duty to ensure that everyone in Zimbabwe is afforded a right to adequate housing. The essay assesses the extent to which international law can be relied upon to enforce a right to housing where neither the Constitution nor legislation provides for such a right. The authoress endeavours to answer the question of whether international law can play a meaningful role in the adjudication of the right to housing in Zimbabwe.

Robert Smith & Nucharee Smith are the authors of the seventeenth essay **-** *Use and Abuse of social media in Myanmar between 2010 and 2022*. Myanmar, or Burma as it was previously known, has been under almost most continuous military rule since 1962 except for a brief period from 2016 until 1 February 2021. The military started the transfer of power to a civilian government in 2010 until the military staged a coup on 1 February 2021. The period from 2010 saw the opening up of the telecommunications sector and a rapid uptake in social media.

The spread of smartphones has opened up communication to the masses and provided them with access to information; the Myanmar Military has also used it to spread disinformation, as described by the authors. These campaigns are used to uphold the state, people and religion. In many of these endeavours, they have been supported by non-state actors. Since the military takeover in 2021, the resistance has also used social media, particularly young people and the many ethnic armed groups.

A History of the Common Law Double Jeopardy Principle: From Classical Antiquity to Modern Era, which is the eighteenth essay, has been authored, too, by **Ger Coffey**. The double jeopardy principle is a guarantee of individual liberty that has ancient origins. The research question and attending analyses presented in this essay advance an examination of the evolution of the double jeopardy principle in historical context. The author examines theoretical underpinnings and considers the extent to which the criminal justice system developed a public prosecution model of criminal justice. The incremental development of this fundamental principle of criminal justice can be explained in terms of the deficiencies in medieval criminal procedure, prejudices and practices of medieval trial procedure and punishments imposed on convicted offenders. Jurisprudence on the application of the principle indicates significant developments following the Restoration.

The nineteenth and final essay in this volume, *The "One in, One out" Approach in the New Communication on Better Regulation: A Brief Reflection,* has been authored, too, by **Marta Picchi.** On 29 April 2021, the European Commission adopted the Communication "Better regulation: Joining forces to make better laws" with the aim of further improving the legislative process of the European Union. The authoress focuses on the "one in, one out" approach that has been introduced as a criterion for evaluating public policies.

Many of the debates analysed are ongoing and the policy, ideas and interpretation brought up in the essays will undoubtedly contribute to future debates. I hope the reader will find the 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 other current issues.

The views expressed in the essays in this volume are those of the authors and do not represent nor are they intended to represent the views of any other individual or body.