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Editors-in-Chief's Introduction to the Spring Issue of Volume V of the Cambridge Law Review

It is with great pleasure that I present the Spring Issue of Volume VI of the Cambridge Law Review. Thanks to the remarkable quality of the submissions and editing, the journal has managed, in just a few years' time, to become recognised as a high-calibre publication. This year has been our busiest one yet. We strengthened our previously established partnerships with the Oxford Undergraduate Law Journal and the London School of Economics Law Review and we also built new relationships. As of 2021, the Cambridge Law Review is proud to be partners with the Bristol Law Review, the Exeter Law Review, the Durham Law Review, and the Harvard Undergraduate Law Review. We also participated in educational seminars where we discussed various aspects of academic publishing with Editors-in-Chief of law reviews from around the world (such as the University of Bologna Law Review, the Auckland University Law Review, and the Oxford Undergraduate Law Journal).

The increased exposure combined with the interest generated by the high-quality of the articles published in the previous Volumes raised the journal's profile, leading to a record number of submissions for the Spring Issue of Volume VI. For this reason, we decided to double the number of articles published in this Issue. Volume VI, Issue I comprises scholarship from a variety of disciplines. The articles published deal with contemporary matters in the areas of Constitutional Law, Indigenous Law, International Arbitration, Financial Services Regulation, Company Law, International Human Rights Law, Discrimination Law, Tort Law, and others. More particularly:

In his article "Constitutional Courts' Activism and the Relation Between Law and Politics: A Legal Theoretical Contribution", Professor Mauro Zamboni examines the role and place of Constitutional Courts in Western or Western-like democracies. As he argues, even though Constitutional Courts play a bridging role between the political and legal worlds, they are – from an institutional and functional

perspective – primarily legal actors. Therefore, their position as institutional actors should be based upon the direct effects of their decisions ('outputs') in the legal arena, rather than on the indirect consequences ('outcomes') in the political arena. The article concludes that the Constitutional Courts' primary responsibility ought to be towards the legal community and the paradigms governing its discourse.

Professor Frankie Young writes in the area of Indigenous Law and Private International Law (Conflict of Laws). His article "Positioning Indigenous Law in the Legally Pluralistic State of Canada" constitutes a commentary on the Beaver v Hill judgement. This is a key legal decision from the State of Canada that deals with the application of Private International Law to resolving a Family Law dispute involving indigenous litigants. Providing a well-reasoned analysis of the Court of Appeal's judgement, Young sheds light on contentious issues regarding the application of Indigenous Law.

Domenico Piers De Martino and Dr Katharina Plavec write on the topical issue of 'digital arbitration'. Their article "Has COVID-19 Unlocked Digital Justice? Answers from the World of International Arbitration" presents the legal framework regarding online hearings and examines how arbitral institutions around the world have adapted to the constraints imposed by the COVID-19 pandemic. After analysing the relevant regime, the authors conclude that a single, uniform and exhaustive answer on the legality of virtual hearings is not possible. This is because the answer is conditional upon the position adopted in legislation across multiple jurisdictions and requires an ad hoc approach. Nevertheless, they find that, in general, remote hearings are permissible under the New York Convention, and are not prohibited by the national arbitration laws of the analysed jurisdictions. Therefore, they predict that remote hearings will be more widely adopted in the near future.

Aleksander Kalisz also writes in the area of International Arbitration ("Illegal and Inappropriate Evidence in International Investment Law: Balancing Admissibility"). Given that no clear test has been laid down in the applicable procedural rules or treaties regarding the admissibility of illegally or inappropriately obtained evidence, Kalisz uses case law to examine whether a common test for admissibility can be inferred from arbitral decisions. Case law, in this context, is relevant because, although there is no doctrine of precedent in Investment Law, tribunals are prompted to follow a harmonious interpretation of International Law and previous cases are deemed highly authoritative. Besides case law, the article examines the procedural principles enshrined in Bilateral Investment Treaties (BITs), arbitration rules, and rules on the taking of evidence. Particular emphasis is paid to the International Centre for Settlement of Investment Disputes (ICSID) Convention and Arbitration Rules and the United Nations Commission

on International Trade Law (UNCITRAL) Arbitration Rules. Other non-binding instruments (2020 International Bar Association Rules on the Taking of Evidence, 2018 Rules on the Efficient Conduct of Proceedings in International Arbitration) are also examined to provide a full picture of the legal regime in place.

In her article "Reimagining a Centralised Cryptocurrency Regulation in the US: Looking Through the Lens of Cryptoderivatives", Sangita Gazi presents a comparative analysis of the US regulatory responses to crypto-derivatives with specific references to the UK's and the EU's approaches and rationale towards crypto-derivatives regulations in their respective regions. Through a well-reasoned analysis, Gazi argues that it is paramount that the US enacts comprehensive cryptocurrency regulation that recognizes the novelty of cryptocurrencies' market risks and introduces a robust regulatory infrastructure to limit market manipulation in the cryptocurrency spot market vis-à-vis the crypto-derivatives market. Gazi envisions a cryptocurrency regulation that includes: (i) a centralised cryptocurrency trading platform; (ii) a mandatory registration requirement for all cryptocurrency exchanges and; (iii) a federal cryptocurrency agency. She suggests that, with a degree of centralisation, a federal cryptocurrency agency is likely to establish the desired visibility into the cryptocurrency spot and an effective oversight mechanism that would eventually help curb market manipulation and restore investor confidence.

Mikołaj Kudliński writes in the area of Company Law. His article "Are Involuntary Creditors Adequately Protected from the Adverse Impact of the Doctrine of Limited Liability? An Analysis of the Origins of the Doctrine and its Modern Application Through the Prism of Involuntary Creditors' Protection", discusses the origins of the limited liability doctrine in the UK law. As it finds, the interests of involuntary creditors were not given adequate consideration at the time of its inception, with the doctrine not being conceptualised to apply to this group of creditors at all. The article analyses the current protection mechanisms available to creditors and discusses alternative approaches to limited liability. As it argues, a control-based presumption of parent liability would strike a fair balance between the interests of the various actors involved in the company's activity, providing involuntary creditors with a greater degree of protection.

Mohamed El Eryan writes on the contentious topic of Iraqi Kurdish self-determination. His paper "Iraqi Kurdish Self-Determination: A Pathway to Secession? Settling the Questions of Application & Scope" examines the extent to which Iraqi Kurds are a people with a right to self-determination and assesses whether that right can express itself through remedial secession. El Eryan finds that there is insufficient support for the existence of a positive right to remedial secession and argues that, even if such a right existed or was to develop in the

future, the situation in Iraqi Kurdistan would not meet the high threshold required for remedial secession to be triggered. For this reason, El Eryan suggests that a political solution based on a broader autonomy arrangement and increased forms of cooperation is needed to resolve the continuing disputes between the Iraqi Federal Government and Iraqi Kurdistan. As he says, until Iraqi Kurds can rely on regional and external political frameworks that provide the required support for statehood, a Kurdish state will not be viable.

In her article "Marking the Internal and External Limits of Discrimination Law in Lee v Ashers Baking Company", Emily Mei Li Ho comments on the UK Supreme Court's Lee v Ashers Baking Company decision. The case involved bakers who refused to fulfil a customer's order of a cake iced with the message 'Support Gay Marriage'. The UK Supreme Court decided in favour of the bakers, and in so doing, analysed and marked the limits of discrimination law – specifically, the prohibition of direct discrimination. In her article, Ho marks these limits, examining their desirability against the background of domestic and international jurisprudence and political theory concerning freedoms of religion and expression. She concludes that the decision was a welcome bridling of discrimination law – an area in which expansions can be tempting owing to the nobility of the aim of equality – but which must be limited for the sake of other liberal values.

Nicholas Goldrosen writes in the area of Criminal Law. In his article "What Happens in the Jury Room Stays in the Jury Room: R v Mirza, the Criminal Justice and Courts Act, and the Problem of Racial Bias", Goldrosen argues that the courts' refusal to consider juror testimony about deliberations and the laws restricting jurors from speaking about deliberations prevent defendants from seeking adequate redress for juror racial bias. As exemplified in the R v Mirza decision, English courts have historically upheld jury secrecy by holding that the interests of finality and candour outweigh the injury done to a defendant by juror racial bias. While the Criminal Justice and Courts Act 2015 has introduced some changes to jury secrecy law (mainly by allowing jurors to report some forms of misconduct that occur during deliberations), these are not adequate in protecting defendants' rights. As Goldrosen shows, the Act's reporting provisions are overly complex, largely non-adversarial, and too focused on enabling the prosecution of jurors who commit misconduct. For this reason, the author argues that a reform of this Act to more explicitly focus on protecting defendants from juror misconduct – and in particular, juror racial bias – is necessary to better secure defendants' fair trial rights.

The last article of this issue is written by Soh Kian Peng ("Spandeck: A Relational View of the Duty of Care"). Relying on the example of the Spandeck framework in Singaporean jurisprudence, Peng presents the argument that such

frameworks – being consistent with a relational conception of tort law– can provide a useful means of determining whether a duty of care exists. In so doing, the article addresses some criticisms of the relational view and re-emphasises the important role the duty of care plays in the tort of negligence.

Overall, the ten articles included in this Issue constitute exceptional pieces of academic work that enrich the literature in their respective fields. They provide valuable insights into the selected areas of research, constituting enjoyable reads that would be of interest to British and international, academic and professional audiences alike.

I owe heartfelt thanks to our team of Associate, Senior, and International Editors for their dedication and work during these challenging times. Despite the difficulties caused by the COVID-19 pandemic and the subsequent lockdowns, the Editorial Board worked tirelessly to ensure the highest standards of quality for this Issue. I would also like to express my gratitude to the Honorary Board for their invaluable guidance and to the Cambridge University Law Society for their continued support, without which this Issue would not have been possible. I look forward to presenting the Autumn Issue which will be published later in the year.

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