Recent publications on international human rights

Citizenship and Immigrant Incorporation: Comparative Perspectives on North America and Western Europe / Gokce Yurdakul (ed.). Palgrave Macmillan US, 2016. ISBN: 1-349-60259-0

The contributions in this volume consider the question of migrant agency, how Western societies are both transforming migrants, and being transformed by them. It is informed by debates on the new ‘transnational mobility’, the immigration of Muslims, the increasing importance of human rights law, and the critical attention paid to women migrants.

* * *

Comparative Discrimination Law: Historical and Theoretical Frameworks / Laura Carlson. Brill, 2017. ISBN: 2452-2023

Human history is marked by group and individual struggles for emancipation, equality and self-expression. This first volume in the Brill Research Perspectives in Comparative Discrimination Law briefly explores some of the history underlying these efforts in the field of discrimination law. A broad discussion of the historical development of issues of discrimination is first set out, looking at certain international, regional and national bases for modern discrimination legal structures. Several of the theoretical frameworks invoked in a comparative discrimination law analysis are then addressed, either as institutional frameworks or theories addressing specific protection grounds. This first volume is dedicated to setting out an introduction to the field of comparative discrimination law to give the reader a platform from which to undertake further reading and research in the compelling topic of comparative discrimination law.

* * *

The Cultural Politics of Human Rights: Comparing the US and UK / Kate Nash. Cambridge University Press, 2009. ISBN: 0-511-51754-8

How does culture make a difference to the realization of human rights in Western states? It is only through cultural politics that human rights may become more than abstract moral ideals, protecting human beings from state violence and advancing protection from starvation and the social destruction of poverty. Using an innovative methodology, this book maps the emergent ‘intermestic’ human rights field within the US and UK in order to investigate detailed case studies of the cultural politics of human rights. Kate Nash researches how the authority to define human rights is being created within states as a result of international human rights commitments. Through comparative case studies, she explores how cultural politics is affecting state transformation today.

* * *
Challenging questions arise in the effort to adequately protect the cultural rights of individuals and communities worldwide, not the least of which are questions concerning the very understanding of ‘culture’. In *Cultural Rights in International Law and Discourse: Contemporary Challenges and Interdisciplinary Perspectives*, Pok Yin S. Chow offers an account of the present-day challenges to the articulation and implementation of cultural rights in international law. Through examining how ‘culture’ is conceptualized in different stages of contemporary anthropology, the book explores how these understandings of ‘culture’ enable us to more accurately put issues of cultural rights into perspective. The book attempts to provide analytical exits to existing conundrums and dilemmas concerning the protections of culture, cultural heritage and cultural identity.

---

In a “digital world” like ours, vast Information and Communication Technology (ICT) infrastructures are highways where run extensive flows of information, dictating the rhythm of our day-to-day lives. Such a deep influence, close to be an addiction for us, turns ICT an unquestioned feature of modern life. These premises well portrait the landscape in which the diverse spectrum of actors committed to promote, defend and restore the human rights operate. Therefore, the risk is to mistake the means with the ends; but, even if the subject of this work, Digital Evidence, is technology-related, the purpose of the study is the goal to which it tends: human rights and their protection.

Moreover, the wide diffusion of “capturing devices” that allow the documentation of human rights abuses throughout massive streams of data from diverse sources will raise new needs: *in primis* a careful collection and interpretation of the most relevant ones, and then the establishment of mechanisms to ensure the validity and reliability of newly acquired information.

The whole chain that connects all the required steps in order to turn digital data into “digital legal evidence” relevant for the protection of human rights, represents a challenge for human rights practitioners, as individual activists, as well as organizations. Every single step is fundamental: collection, management, preservation, analysis and security of data, along with an effective communication and strategic use of evidence.

Twitter tweets, Facebook and Blogs posts, Instagram photos and You Tube videos, even when considered too weak for a conviction to be founded on, can play an important role outside of a courtroom, establishing the grounds for prosecution indictments or, in general, creating awareness of human rights abuses.

Consequently, new forms of human rights activism, like the so-called “hashtag activism”, pass through social media and have the power to generate a real change at both legal and awareness level. The risk to be avoided is to mortify this power using social media as a shortcut to be politically active or socially trendy making a mere “clictivism”.

Hence, the core of this work revolves around the pivotal question of legal sufficiency of the digital means employed in recording human rights abuses and the consolidation of standards and procedures regulating the admissibility of collected evidence in the court of law. The purpose is to provide an answer from a tri-folded point of view.
The U.S. legal system leads in the regulation of the requirements for digital evidence to be admitted at trial; nonetheless, also International courts like ICC, ICTY and ICTR follow rules and procedure for that purpose, based on authenticity, protection of privacy, chain of possession and reliability of the electronic evidence. At the European level, instead, the lack of a common legislation relevant to the admissibility of d-evidence at trial required a comparative study of the respective provisions contained in many Europeans countries’ procedural law. For these three levels a special attention is reserved to the analysis of the lifecycle of digital evidence, from the creation and use of digital human rights documentation for immediate purpose to its later admission as evidence in legal proceedings, as well as to the authentication issue.

At the last stage a collection of the most relevant case law form the principal U.S. courts and International courts is provided.

***

Footprints of the 20th Century: The Illusion of Dé tente (Volume 2) / Frans Alting von Geusau. Wolf Legal Publishers, 2017. ISBN: 9789462404175

Since 1989, we refer to the whole post-war period as the “Cold War Era”. Such was not the case in 1968. At the time, the Cold War – in our perception – was behind us. We no longer felt to be in the midst of it. Europeans on the Western side of the Iron Curtain felt relatively at ease with Europe’s division. The era of Dé tente as we called it, was considered to be a fairly stable and long-lasting political condition, even after Soviet tanks crushed Dubcek’s socialism with a human face in Prague.

A strange year it was...1968. Academic interest was focused on the war in Vietnam, non-proliferation of nuclear weapons, the French Gaullist challenge to the European Communities and the student revolt in Paris. The Western democracies promoted the process of dé tente on the basis of three political illusions. They assumed that common institutions between East and West would generate a sense of common interest in European security, facilitating negotiated solutions of outstanding problems. They expected East-West economic cooperation to promote reform from above in the East, towards more open societies. They hoped to foster democracy and respect for human rights through cooperation in the cultural and human dimension. By 1989 all three of them had proven to be illusions. The end of the Soviet system came as a complete surprise to most politicians and to all Western advocates of dé tente in the Nineteen Eighties. The so-called dissidents won a peaceful victory over the one-party, repressive regimes in the East and helped to end the post-war division of Europe. Obviously, neither the (now former) communists nor the advocates of dé tente ever admitted their wrong. So they went all into the business of proclaiming a new era as a continuation of the old one. The greatest catastrophe of the Twentieth Century was Lenin’s creation of totalitarian Soviet Russia at the end of the Great War and not its collapse at the end of the Cold War, as president Putin said in 2005. This volume particularly challenges the past illusions of dé tente and the present approach of organized forgetting the past.

Since the successful and peaceful revolution in 1989 ended the division of Europe and the bipolar nuclear stalemate, we collectively entered the brave new world of organized forgetting. Nevertheless, the footprints of that past century are still all around. This series is intended to identify, to explain and to remember, because the more things are0 said to change, the more things appear to remain the same. We must therefore learn from history if only to avoid repeating a few of the blunders of the past century.

***
In 1999, the Alliance mistakenly bombed the Chinese embassy in Belgrade. Around the same period, allegations were made regarding its involvement in human trafficking and forced prostitution in Bosnia-Herzegovina. A decade later, NATO airplanes hit a fuel truck causing significant civilian casualties in Kunduz, Afghanistan. After more than 60 years of existence and a track-record of more than 30 missions performed worldwide, it is surprising that there is still uncertainty on the scope and content of NATO’s responsibility for wrongful conduct during its military operations. This timely book deals with the international responsibility of NATO during military operations. It examines, the status of the Alliance, the existence of international obligations and conditions of attribution of conduct in NATO.

A New Era for Mental Health Law and Policy: Supported Decision-Making and the UN Convention on the Rights of Persons with Disabilities / Piers Gooding. Cambridge University Press, 2017. ISBN: 1-107-14074-9

The Convention on the Rights of Persons with Disabilities (CRPD) has generated new ideas and standards in healthcare and disability law and policy. In the mental health context, the CRPD directs governments to ensure people with mental impairments are treated equally before the law, including ensuring people have access to the resources necessary to enjoy their rights. But what this means in practice remains unclear. In addition, current domestic laws that authorize involuntary psychiatric interventions stand at cross-purposes with the CRPD, which requires respect for the ‘will, preference and rights’ of persons with disabilities ‘on an equal basis with others’. This book explores the implications of the CRPD for law, policy and practice that responds to the complex issues raised by mental health impairment and disability. It argues that the support framework of the CRPD holds potential to address persistent shortcomings in mental health law and policy.

Refugee Economies: Forced Displacement and Development / Alexander Betts et al. Oxford University Press, 2017. ISBN: 0-19-879568-8

Refugees have rarely been studied by economists. Despite some pioneering research on the economic lives of refugees, there remains a lack of theory and empirical data through which to understand, and build upon, refugees’ own engagement with markets. Yet, understanding these economic systems may hold the key to rethinking our entire approach to refugee assistance. If we can improve our knowledge of the resource allocation systems that shape refugees’ lives and opportunities, then we may be able to understand the mechanisms through which these market-based systems can be made to work better and turn humanitarian challenges into sustainable opportunities. This book adopts an inter-disciplinary approach, based on original qualitative and quantitative data on the economic life of refugees, in order to begin to build theory on the economic lives of refugees. It focuses on the case of Uganda because it represents a relatively positive case. Unlike other governments in the region, it has taken the positive step to allow refugees the right to work and a significant degree of freedom of movement through it so-called ‘Self-Reliance
Strategy’. This allows a unique opportunity to explore what is possible when refugees have basic economic freedoms. The book shows that refugees have complex and varied economic lives, often being highly entrepreneurial and connected to the global economy. The implications are simple but profound: far from being an inevitable burden, refugees have the capacity to help themselves and contribute to their host societies - if we let them.

***

Religious Discrimination and Cultural Context: a Common Law Perspective / Kerry O’Halloran. Cambridge University Press, 2017. ISBN: 1-108-42305-1

Generations of festering culture wars, compounded by actual wars in predominantly Muslim countries, the terrorism of Isis, and the ongoing migrant crisis have all combined to make religious discrimination the most pressing challenge now facing many governments. For the leading common law nations, with their shared Christian cultural heritage balanced by a growing secularism, the threat presented by this toxic mix has the potential to destabilize civil society. This book suggests that the instances of religious discrimination, as currently legally defined, are constrained by that cultural context, exacerbated by a policy of multiculturalism, and in practice, conflated with racial, ethnic or other forms of discrimination. Kerry O’Halloran argues that many culture war issues - such as those that surround the pro-choice/pro-life debate and the rights of the LGBT community - can be viewed as rooted in the same Christian morality that underpins the law relating to religious discrimination.

***

Revisiting Procedural Human Rights: Fundamentals of Civil Procedure and the Changing Face of Civil Justice / Alan Uzelac and Remco van Rhee. Intersentia, 2017. ISBN: 1-78068-533-5

The idea of human rights as fundamental rights of every person is certainly one of the most powerful ideas of our modern age. Since the American and French revolutions, human rights have been the strongest link between law and democracy. They have played a crucial role when defining notions of constitutionalism and the rule of law. While some human rights have been made famous in national mottos such as the French liberté, egalite´ et fraternite´, other human rights have not attracted such attention. Generally, substantive human rights have been discussed and appreciated more than procedural human rights. Yet, without an effective and well-balanced set of procedural rights, the substantive rights and freedoms of almost any person or business would not enjoy effective protection before the courts of law. Based on the wish to reopen an international comparative discussion on fundamental notions of civil procedure, this book offers a number of insights into procedural human rights from different jurisdictions and different points of view. While some previous studies focused on Northern Europe, many of the authors in this book come from Southern and Eastern Europe, areas where a common understanding of procedural human rights may be an even more pressing necessity.

***

Theoretical Boundaries of Armed Conflict and Human Rights / Jens David Ohlin. Cambridge University Press, 2016. ISBN: 1-107-13793-4

In the last two decades, human rights law has played an expanding role in the legal regulation of wartime conduct. In the process, human rights law and international humanitarian law have
developed a complicated sibling relationship. For some, this relationship is viewed as a mutually reinforcing effort between like-minded regimes designed to civilize human behavior. For others, the relationship is a more complicated sibling rivalry. In this book, an unparalleled collection of legal theorists examine the relationship between these two bodies of law. Each chapter skillfully maps the possibilities of harmonization while, at the same time, raising cautionary flags about the limits of that project. The authors not only chart the existing state of the law, but also debate the normative implications of the continuing influence of human rights norms on current practices including torture, targeted killings, the conduct of non-international armed conflicts, and post-war state building.

***

Transitional Justice and the Public Sphere: Engagement, Legitimacy and Contestation / Chrisje Brants and Susanne Karstedt (eds.). Hart Publishing, 2017. ISBN: 1-5099-0016-0

Transparency is a fundamental principle of justice. A cornerstone of the rule of law, it allows for public engagement and for democratic control of the decisions and actions of both the judiciary and the justice authorities. This book looks at the question of transparency within the framework of transitional justice. Bringing together scholars from across the disciplinary spectrum, the collection analyses the issue from socio-legal, cultural studies and practitioner perspectives. Taking a three-part approach, it firstly discusses basic principles guiding justice globally before exploring courts and how they make justice visible. Finally, the collection reviews the interface between law, transitional justice institutions and the public sphere.

***

The Use of Force and Article 2 of the ECHR in Light of European Conflicts / Hannah Russell. Hart Publishing, 2017. ISBN: 1-5099-1181-2

Article 2 of the European Convention on Human Rights (ECHR) in its current form is incomplete and outdated. Due to significant development at a legislative and judicial level, the right to life spans beyond what is enumerated within Article 2. With the belief that Article 2 is still relevant, this book investigates how the right to life can be better protected within Europe. It advocates for the modernization of Article 2 through codifying legislative and judicial developments relevant to this provision in the form of guidelines. It also considers the improvements that can be made by the Council of Europe (CoE) bodies – the European Court of Human Rights (ECtHR), the Committee of Ministers (CoM), the Parliamentary Assembly of the Council of Europe (PACE) and the CoE Commissioner for Human Rights – to encourage adherence to Article 2 and promote effective remedies to prevent future violations. It uses the experience from four internal European conflicts – the Basque conflict, the Chechen conflict, the Northern Ireland Troubles and the Turkish-Kurdish conflict – to illustrate its points.