

Editorial

On Some Enquiries Into Rebalancing Values in Rules

In this last issue of 2020, we again try to offer you a choice of interesting articles and reviews in various fields of private law – persons, contracts and torts, conflicts of laws and dispute resolution, and all of them to some extent prospective. It has always been the policy of this journal not to limit its contents to law as it is, which does not mean that we do not value the wisdom of scholars analysing positive law, especially when it is comparative. But if legal scholarship wants to raise any claim to being a science, it has to study at least also the effects of legal rules and institutions on society and its members, and discuss alternative rules.

In this issue, we have an excellent example of this in the article on Sales contracts and the circular economy by Katarzyna Kryla-Cudna. She discusses the effects of the rules concerning remedies (incl. limits) in sales contract law and how a better balance can be reached by reforming them, in order to take into account not only the interests of the parties, but also environmental and sustainability concerns. The analysis also illustrates the necessity of taking into account different values or principles and balancing them when making or constructing rules. The idea that a higher standard of a single value, how important it may be, as consumer protection (or more generally protection of the weaker party) is, is the preferred solution is often *une fausse bonne idée*. Good law requires balancing of different principles that may all be important or valuable in themselves, but have nevertheless to be limited. This is first of all the task of the legislator, having the democratic legitimacy to make such choices, but it nevertheless makes sense to indicate how existing norms can be interpreted to reach this equilibrium (in the case at hand the open norm of good faith).

It is also clear that new developments in technology or in behavioural sciences can be a good occasion to evaluate existing law and propose alternatives, and we have another good example with Francesco Patti's article on personalization of unfair terms control.

We're also proud to publish the second Ole Lando Memorial lecture by Christian v. Bar on Contract law and human dignity, where, although centred around a single value, the need to balance the interests involved is developed in relation to some complex and very sensitive issues. An article by Ole Aldag on conflict of law rules concerning environmental damage equally balances the

legitimate expectations of claimants and defendants litigating in this field. And our last article, by Vera Lúcia Raposo, considers how alternative dispute resolution methods can address the failures of litigation as a means of resolving disputes related to medical liability.

Keep safe and enjoy reading!

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