

SUMMARY

DEBATE

On universal jurisdiction

Conducted by *Consuelo Ramón Chornet*

Introduction. About the legal reforms of universal jurisdiction in Spain	10
<i>Consuelo Ramón Chornet</i>	
Universal criminal jurisdiction of international crimes and immunities of the state and its agents.....	24
<i>Antonio Remiro Brotóns</i>	
Denaturing universal justice: towards an exclusive and conditional persecution of terrorism	48
<i>José Elías Esteve Moltó</i>	
Universal jurisdiction: an essential aim in the fight against impunity, also from Spain	70
<i>Antoni Pigrau Solé</i>	

STUDIES

Criminal Law, international waters and extraterritorial application of the criminal law	102
<i>Gonzalo Quintero Olivares</i>	
The contexts of freedom of expression: paradigms and new frontiers	134
<i>Francisco Javier Ansuátegui Roig</i>	
Transitional justice: an overview from the perspective of an academic in criminal law.....	154
<i>Gabriele Fornasari</i>	
The recent evolution of the Spanish case law on alteration of contract circumstances. A question of justification and legal technique.....	186
<i>Encarnación Fernández Ruiz-Gálvez</i>	

TODAY'S ISSUES

The Syrian lawsuit before the Spanish Audiencia Nacional.....	213
<i>Almudena Bernabeu</i>	

VARIA

Lecture for the investment as doctor honoris causa at the University Pablo de Olavide	229
<i>Ángel M. López y López</i>	
<i>Laudatio</i> of professor Dr. Ángel M. López y López, invested as doctor honoris causa at the University Pablo de Olavide of Seville.....	241
<i>Francisco Oliva Blázquez</i>	
Book review. Francesco Biondo, <i>Desobediencia civil y teoría del Derecho</i>	249
<i>Lupe Bohorques Marchori</i>	
Author guidelines	257
Ethical guidelines	267

INTRODUCTION. ABOUT THE LEGAL REFORMS OF UNIVERSAL JURISDICTION IN SPAIN

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ABSTRACT

The evolution on the legal reforms adopted by the Spanish government about universal jurisdiction admits that those pragmatic (but non-realistic) critics were right when they expected a short trajectory for these reforms. Their insistence on the difficulties related to the effectiveness — understood ideally with a note of an inexorable imposition attributed to legal phenomena— is not sufficient to refute its value as a condition of legitimacy of those phenomena. In any case, the fight against the impunity of those behaviors being grave vulnerations of human rights requires a determined political will and clear legal instruments. None of these requirements seems to be met in the Spanish case currently.

KEYWORDS

Sovereignty, immunity, human rights, universal jurisdiction, impunity, legitimacy.

UNIVERSAL CRIMINAL JURISDICTION OF INTERNATIONAL CRIMES AND IMMUNITIES OF THE STATE AND ITS AGENTS

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ABSTRACT

Universal criminal jurisdiction of international crimes and immunity of the State and their agents are linked issues. To assume and secure the first one only helps if jurisdiction is not restricted. And vice versa: to reduce the cases of immunity is *a show for the gallery* if the principle of universality is neglected as the basis of jurisdiction. States are entitled by international law to incorporate this principle to their legal framework, but policies in this regard are regressive nowadays, such as in Spain. Nevertheless, immunities, consolidated by international courts, maintain all their vigour.

KEYWORDS

Aut dedere aut judicare, immunities, International Court of Justice, international crimes, International Criminal Court, universal jurisdiction.

DENATURING UNIVERSAL JUSTICE: TOWARDS AN EXCLUSIVE AND CONDITIONAL PERSECUTION OF TERRORISM

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ABSTRACT

The LO 1/2014 reforming article 23.4 LOPJ has been a decisive step back in the fight against impunity. Since then universal jurisdiction in Spain has been virtually blocked to pursue the most serious international crimes, such as genocide, crimes against humanity and war crimes. However, the same article grants privileged treatment to Spanish jurisdiction to prosecute terrorist crimes, if only one of the eight connection points is fulfilled. Taking advantage of this legal special treatment, some cases in the National Court have not been able to be filed (Ellacuría, Carmelo Soria). At the same time other new cases have been admitted to processing by reconverting international crimes to State terrorist offenses (Boko Haram, Syria).

KEY WORDS

Universal Jurisdiction, article 23.4 LOPJ reform, international crimes, terrorism, State terrorism, jihadism.

UNIVERSAL JURISDICTION: AN ESSENTIAL AIM IN THE FIGHT AGAINST INMPUNITY, ALSO FROM SPAIN

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ABSTRACT

This paper seeks to justify the importance of exercising universal jurisdiction to combat impunity in cases of serious human rights violations. More specifically, it seeks to defend the need to recover the exercise of universal jurisdiction in Spain. To this end, different aspects are tackled: the scope of consensus on the most serious crimes of international importance; the dimension of the space of impunity for such crimes with special reference to the factors limiting the action of the International Criminal Court; the fundamental role played by universal jurisdiction as a palliative to impunity, and the necessary revitalization of universal jurisdiction in Spain, after the legislative process of disarticulation that this principle has suffered in recent years.

KEYWORDS

Universal Jurisdiction, International Criminal Court, impunity, international crimes, Spain.

CRIMINAL LAW, INTERNATIONAL WATERS AND EXTRATERRITORIAL APPLICATION OF THE CRIMINAL LAW

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ABSTRACT

The fight against the damage to them natural resources requires efforts of all the States. Different Treated will occupy from it. The efficiency of that fight depends of the firmness in the compliance of those treated, and of the economic exclusion of them States that conducive to and protect its breach through flags of convenience and others classes of protection. The contribution of the criminal justice of each State is essential. Establish limits to the application extraterritorial of the criminal law, against the obligations acquired by treated, contributes to the impunity and promotion of activities that eventually with them resources marine. The use of flags of convenience precludes the respect for the jurisdictional priority of the States that grant them The last criteria of the Spanish Supreme Court are incompatible with international criminal solidarity.

KEYWORDS

International waters, natural resources, treaties, fishing, illegal fishing, criminal prosecution, criminal jurisdiction, flag of convenience, Antarctic Ocean.

THE CONTEXTS OF FREEDOM OF EXPRESSION: PARADIGMS AND NEW FRONTIERS

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ABSTRACT

The historical nature of rights leads to the necessary contextualization of the justifications and conditions of the exercise of the rights. In the case of freedom of expression, the context is determined, among other elements, by internet and hate speech. It is about two realities —where individual and group vulnerability becomes more evident— which force to reformulate fundamental aspects of the legal regulation of freedom of expression, as well as to wonder how far the legal response can always be considered as the most appropriate. Moreover, it is crucial to question the distinction between different models of democracy, on the basis of the major or minor extent of freedom of expression edges.

KEYWORDS

Freedom of expression, internet, hate speech, democracy.

TRANSITIONAL JUSTICE: AN OVERVIEW FROM THE PERSPECTIVE OF AN ACADEMIC IN CRIMINAL LAW

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ABSTRACT

The paper analyses various paradigms of transitional justice, by outlining their fundamental features and devoting particular attention to the experiences of Italy, Spain, Germany, South Africa and several others South American and African ones. In the final part, the essay investigates into the influence of such models on some of the fundamental safeguarding principles of guarantee of modern criminal law.

KEY WORDS

Transitional justice, human rights, fundamental safeguarding principles.

THE RECENT EVOLUTION OF THE SPANISH CASE LAW ON ALTERATION OF CONTRACT CIRCUMSTANCES. A QUESTION OF JUSTIFICATION AND LEGAL TECHNIQUE

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ABSTRACT

The article analyzes the new jurisprudential doctrine on the *rebus sic stantibus* clause formulated in STS 333/2014, of June 30, and confirmed by STS 591/2014, of October 15, furthering the relationship that can be established between attempts of foundation of the clause *rebus* that appeal to the demands of the justice and the equity and its objective technical and juridical foundation in the frame of the positive law; focusing on the necessary balance between the principle of the binding character of the contract and the doctrine *rebus* linked to the principles of commutativity of legal trade and *bona fide*; and emphasizing the importance of reconciling flexibility and attention to the circumstances of the specific case, which are characteristic of a non formalist approach, with scientific rigor through the technical —legal elaboration of the application requirements of the clause: Hardship and the non— assumption and reasonable unpredictability of the risk.

KEY WORDS

Rebus sic stantibus, commutativity, causal foundation of the contract, hardship, contract risk.