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Introduction

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Welcome to the second issue of the first year of the new series of *Amicus Curiae*.

In this issue, several contributions address procedural concerns related to civil justice and include Aongus Cheevers' examination of progress in the development of mediation in Ireland in his article 'The Irish Mediation Act 2017: Much Done, More to Do'. He points out that, while the regulation of the practice of mediation in Ireland has been enhanced through the Act, the development of mediation as a profession has been less successful, and that an important factor in this slow professionalization has been uneven implementation of the provisions of the 2017 Act. His paper also shows a divergence from judicial practice in England and Wales in that a lack of robustness on the issue of award of costs against parties who fail to engage seriously with mediation in civil proceedings has also limited more widespread acceptance of mediation for resolving civil disputes. In his contribution, Doran Doeh lays out some of the issues that arise in relation to awards of costs in commercial arbitration. He points out that arbitration practitioners—arbitrators and counsel—often view costs considerations against their experience of the practices relating to allocation of costs of their respective national courts. Under the 'American rule', each side bears its own costs. By contrast, under 'the English approach' in another major common law legal system on the other side of the Atlantic, the principle is that 'costs follow the event', i.e. in a simple case the loser pays the winner's costs. Other countries, many of which have civil law systems, apply variations on these approaches. However, in international commercial arbitration, the parties, their counsel and the arbitrators may, and often do, have differing national backgrounds. International arbitration practitioners have therefore evolved (and continue to evolve) their own ways of approaching the costs issues, and these are explored in the analysis offered. In his article 'In Chancery: The Genesis of Micro Caseflow Management', Michael Reynolds looks at how responses to the serious problems in the civil justice system of England and Wales in the 1870s, including inefficiencies in case handling and

the competing jurisdictions of equity and common law, involved fundamental procedural reform, including codification and unification of the procedural and administrative system, and the creation of the Official Referees Office, inspired to some extent by the work of arbitrators and by a felt need to restore confidence in commercial dispute resolution. There were also innovations that in today's language might be thought of as 'fitting the forum' to the seriousness and complexity of the 'fuss', and glimpses of 'judicial case management' and 'expert evaluation'. In many respects they were revolutionary and anticipated the civil justice reforms of the 1990s, acknowledging possibly a transformative role for a judge.

Several contributions take up issues of security. Thus, in his essay entitled 'Limits to Terror Speech in the UK and USA: Balancing Freedom of Expression with National Security', Ian Turner notes how the speed, ease and little cost incurred in sharing terror speech online is an increasingly important national security concern. But, at the same time, there has to be protection of freedom of expression. He examines how the Terrorism Act 2006 characterizes and implements the offence of 'encouragement of terrorism'. He argues that the proportionality test applied in the UK undermines 'freedom of expression' more than the US test of 'strict scrutiny', and that the UK's approach to limiting terror speech is arguably too intrusive of freedom of expression. He suggests reform of UK law so that there is a more balanced approach and *inter alia*, argues for a tightening of the proportionality by incorporating some elements of strict scrutiny from the US law. Faye Wang's article on 'Cybersecurity Regulatory Development in the EU' observes that cyber-attacks have become a very serious matter in Europe, often in an unpredictable manner, threatening essential services, important products and key infrastructures. Finding solutions to such aggression is difficult, but appropriate technical and legal measures may prevent or at least limit the seriousness of the intended damage. The contribution examines the most recent EU cybersecurity legislative developments, such as the newly adopted EU Cybersecurity Act and other legal and technical measures, and considers their capacity to withstand such intrusions. Also linked, albeit indirectly, to issues of national security is the problem of large-scale and often international processes of money laundering. In their contribution, 'Money Cleansing and the Effectiveness of FATF Coercive Measures: An Overview', Ejike Ekwueme and Mahmood Bagheri examine responses to the serious problem of money-laundering

proceeds of crime and argue that the Financial Action Task Force's (FATF) soft law approach to the problems has in fact been quite successful—the indirect power it has gathered from links with both the International Monetary Fund and the World Bank has enabled it to play a cohesive and coercive role in the implementation of its anti-money laundering recommendations and encouraged a number of states to take appropriate measures against such practices.

Amy Kellam, in her Note on 'Personal Independence Payments' (PIP), addresses recent changes to disability benefits in England and Wales. She argues that the implementation of PIP has had a significant, but under-recognized, impact upon Her Majesty's Courts and Tribunals Service (HMCTS), accounting for the majority of receipts to the Social Entitlement Chamber. In light of ongoing reform to implement Online Dispute Resolution within the HMCTS, the handling of PIP appeals merits particular scrutiny. Kellam concludes that the potential for negative socio-legal consequences to reform should not be underestimated. This is especially so, given that such consequences may manifest in areas different from those where initial reform was initiated and, by hiding in the shadows of wider social issues, make good governance harder to evaluate and failures of governance harder to bring to account.

Two contributions then consider developments in Hong Kong and the southern China region, in part in the context of recent public unrest in Hong Kong. First, Anna Dziedzic, Alex Schwartz and Po Jen Yap report on an important conference held earlier this year at the University of Hong Kong. Entitled 'Civil Unrest in Hong Kong', the meeting highlighted issues that are likely to attract continuing debate, particularly with respect to the modalities of amnesties for criminal offences and the establishment of an independent inquiry into the unrest, especially over the past year or so. Then Zhou Ling, in a Note entitled 'Thinking about Development in Southern China', looks at the emerging Greater Bay Area in southern China and examines a recent and important study from the mainland side on how best the Area might develop and be integrated with Hong Kong. The study, authored by a recently retired civil servant and senior party official who had held office in Shenzhen and at the provincial level of Guangdong, argues that Hong Kong has an important role ahead of it in the development of the Area and may well be an important influence on the trajectory of change.

Another Note introduces the UK's Critical Legal Studies (CLS)

movement, and its perspectives on law, and also includes a call for papers for the 2020 September CLS meeting at the University of Dundee. The meeting this year was intended to build on the characterization of Frankenstein as the assembling by modern scientific processes of dead parts in order to constitute a reanimated whole. From this characterization, the idea emerges of Frankenstein as a conceptual figure, symbolizing both unity and separation, of life and death, and of the power of reason to structure and animate otherwise individual and decaying parts. Applying the metaphor to law—as a Frankenlaw—issues are raised of tensions and links between detachment and community, of touching and separation, of independence and being bound, of unity and corporation, of the rational resolution of multiplicity—and of the modern social order: a divided whole, a community of atomistic modern subjects under a single, sovereign hierarchy.

Finally, Professor Chao Xi and Michael Palmer offer a Bibliography of the published works of Professor Anthony Dicks SC (SOAS School of Law and Essex Court Chambers), whose Obituary was published in *Amicus Curiae* in the Autumn 2019 issue (S2 1(1): 122-23). For many years, Professor Dicks was a leading expert on issues of Chinese law, but his writings were sometimes published in relatively inaccessible outlets, and this compilation may assist those who wish to read more of the work of Professor Dicks on Chinese law.

The Editor thanks contributors, and Dr Amy Kellam and Marie Selwood, for their kind efforts in making this Issue possible.

Special Issues: publication

Amicus Curiae encourages its readers and others to submit proposals for Special Issues of the journal.

It is pleased to announce that the University of London Press will publish, as hard copy books, Special Issues of *Amicus Curiae*. Each issue would be sold with an ISBN number on the University of London Press platform.