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Editorial

Welcome to the first issue of King's Student Law Review for the academic year 2020/2021. Covid-19 has not prevented the submission of a broad range of excellent papers, and we hope that those we have selected for publication will attract a broad range of readership.

We publish in strange and interesting times. A pandemic that only epidemiologists and small, ignored, government departments had imagined 12 months ago, has changed the world. The UK's longest-serving Supreme Court justice, Lord Kerr, today called it a 'dystopian nightmare.' In this dystopian nightmare the clarity of thinking and objectivity of positioning of the law has never been more important. Even in the UK, usually considered one of the world's more open democracies, the government has sought to position the Supreme Court's intervention regarding the exercise of powers as unjustified interference (*R (on the application of Miller) (Appellant) v The Prime Minister (Respondent) Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland)* [2019] UKSC 41.) It has recently created a 'panel of experts' to examine how judicial review challenges are dealt with by the courts, saying it wants to balance the right of citizens to question government policy in court against the executive's ability to govern effectively. Lord Kerr reminded us, 'if we are operating a healthy democracy, what the judiciary provides is a vouching or checking mechanism for the validity [of] laws that Parliament has enacted or the appropriate international treaties to which we have subscribed … The last thing we want is for government to have access to unbridled power.'

There are five articles in this edition of the Journal. Lord Kerr's interview today is pertinent to two of them. In May 2020 he delivered the unanimous ruling of the Supreme Court, overturning the legality of interning Gerry Adams, the former Sinn Féin leader, nearly 50 years ago (*R v Adams (Appellant) (Northern Ireland)* [2020] UKSC 19). The judgement was highly controversial, with Lord Sumption, who served on the Supreme Court until 2018, critical of its reasoning and its predicted consequences. Jack Bickerton addresses this controversial area when he discusses the tension between human rights legislation and the use of preventive detention as a counterterrorism mechanism. He suggests that this approach is suggestive of a war model of legislation rather than of a criminal model. He argues that this leads to interference with individual rights to liberty, fair trial, and due process, and asks when, if ever, this approach can meet the tests of reasonableness and proportionality which could justify such interference.

When asked (by *The Guardian*) to choose which had been his most important case, Lord Kerr opted for the 2018 legal challenge brought by the Northern Ireland Human Rights Commission (*In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland) Reference by the Court of Appeal in Northern Ireland pursuant to Paragraph 33 of Schedule 10 to the Northern Ireland Act 1998 (Abortion) (Northern Ireland)* [2018] UKSC 27), which ultimately led to reform of Northern Ireland's abortion laws. Emily Ottley reflects on the continued criminalisation of abortion in England and Wales, suggesting that the law is long overdue for reform. She argues for abortion on request in early pregnancy, that request being made in the context of the patient-centred, 'best interests' approach of medical ethics rather than in the context of the criminal law, by considering both the incompatibility of the current law with human rights obligations and the modern prioritisation of respect for autonomy in both medical ethics and law.

As we go to press further stories are emerging from Xinjiang regarding the brutal suppression of the Uyghur people, whilst in Cox's Bazar, Bangladesh, over a million Rohingya wait to see whether the International Criminal Court can address the wrongs they have experienced. Malwina Wojcik's discussion of a European Court case considering Holocaust denial is as pertinent today as it ever was. It should challenge us all to consider the role of law in the understanding of and reflection on history, and on how we understand and value truth. Her article analyses the judgment of the European Court of Human Rights in *Perinçek v Switzerland*, which considered whether criminalising denial of the Armenian genocide conflicted with the right to free speech enshrined in Article 10 of the Convention. She examines the judgement in the light of the key arguments for distinct legal treatment of Holocaust denial, suggesting that in affirming different legal treatment of Holocaust denial and denial of other genocides the Strasbourg Court has created a problematic hierarchy of memories.

The rise of virtual currencies, the incomprehensibility, to most of us, of exactly what they are and what guarantee of value 'lies beneath' them challenges the ingenuity of the law. The systems on which governments have relied to understand and regulate the movement of money have traditionally been based on the nature of conventional currencies as issued by a monetary authority, and underpinned by something 'real.' Virtual currencies are not controlled or regulated through traditional means, and their value is determined by the supply and demand of their market. Ilias Ioannou writes on the law's response to the tension between their extraordinary potential to function as a means for good, and their equally extraordinary utility for facilitating the intentions of illicit actors. After considering the regulation of virtual currencies in the European Legal Area, he suggests a more comprehensive legal response is needed, one which involves embedding Virtual Currencies into the financial system by redirecting regulation towards the uniqueness of their underlying technology.

Finally, in an article pertinent to the values of fairness, autonomy and choice and how they are balanced against the group 'good,' Adyasha Samal examines the Group of Companies Doctrine which prescribes a test to determine whether a non-signatory is bound by an arbitration agreement whose scope is extended to them when this is necessary (or even the only way) in order to resolve the dispute. The Doctrine addresses the (presumed) intention of the parties to arbitrate. She considers the Doctrine's requirements – for a tight group structure, involvement of the third party in the conclusion of the contract, and common intention of all parties to bind the third party to the agreement – arguing that this focus on behaviour and written agreement functions to uphold arbitration's core tenet of consent. These considerations of fairness and good faith when 'deeming consent', both general principles of contract law in many civil law jurisdictions, are pertinent to consent to many other areas of law, including the criminal law and medical law and the article stands as evidence not only of scholarship on one area, but of the fact that broad reading across many areas can cross-pollinate legal thinking, only to its benefit.

We hope you enjoy Volume XI, issue I.

Dr Mary Lowth, Editor-in-Chief, Kings Student Law Review.