Volume XI, Issue II (September 2021) Editorial

Welcome to the second issue of King's Student Law Review for the academic year 2020/2021. The publication has been considerably delayed as the Journal, like so much else, has been affected by the Covid-19 pandemic. We hope that we are going to press with greater optimism for education and academia than last time, with vaccination offering the hope that study, even international study, is now possible. However, this reopening also throws back into stark relief other pressing global challenges, in particular increasing health and economic inequality, increasing uncertainties about the future of the planet, and an increasing need to respond to populations on the move across the because of war, because of inequality and because of oppression. If we have learned anything from the last 18 months, it must be that humanity, like all living organisms on Earth, is fragile in the face of these globally-scaled events, whether they are mediated through disease or through other human factors, and that we need to cooperate to survive. All the articles in this edition are in some way pertinent to these issues. In all of these issues a role is being played, and needs to be played, by law.

Our publication this time has five articles. The first two were published as advance articles in May 2021, focussed on mandatory Covid-19 vaccination. Emily Ottley wrote on the potential compliance of mandatory vaccination policies with the State's human rights obligations, asking whether mandatory Covid-19 vaccination for adults in England and Wales might be a justified interference with Article 8 of the European Convention on Human Rights. She suggests that such interference could be justified for the protection of health and the economic wellbeing of the country, supposing that the necessary legislation were enacted, but that this would be contingent on both the way in which the scheme was set up and the effectiveness of education/awareness campaigns. In a companion article Mary Lowth wrote an ethical consideration of mandatory Covid-19 vaccination asking when (if at all) it is morally right to compel individuals to act against their own preferences for the sake of others. She suggests that an argument for mandatory vaccination can be derived from the duty of easy rescue, but that there are limits both to the kind of decisions that can be coerced and the degree of coercion that is ethically permissible.

The last four articles are all published in September 2021, and all relate to the role of the law in addressing fairness in the face of globally-scaled challenges to equality, human rights and the planet itself.

The first concerns the need to share access to essential technologies. Akash Thomas Jose and Rida Ameen consider the issue of fair and equal access to licenses for standard essential patents, suggesting that the law has given insufficient attention to the requirement that access should be given on 'fair, reasonable and non-discriminatory' (FRAND). terms. They suggest that the 'non-discrimination' element of this obligation plays a vital antitrust role, but this has been hampered by the lack of clarity of what 'non-discrimination' means, and a failure of courts in the EU and the UK to specifically consider the interpretation of 'non-discrimination' from an antitrust point of view.

The second article concerns the response of states to the movement of populations. As the peoples of economically challenged, war-torn and oppressive States increasingly travel by irregular means to seek a better, safer home, Mitchell Hill writes on the pressing topic of refugee refoulement. He argues that refoulement principles are a peremptory legal norm now understood as aimed at protecting refugees from the rights violations which forced them to flee, but suggests that non-refoulement is failing. He explores the reasons for this, including

manipulation of concepts like ‘safe State’ and ‘safe third country’, bilateral agreements limiting where refugees may seek asylum, push-back policies, non-binding Diplomatic Assurances which potentially undermine refoulement principles, and vagueness in concepts of permissible derogations which allow States leeway to determine them as they wish. He suggests that this is no longer aligned with the original intentions of the drafters of the 1951 Refugee Convention, and that we can no longer say that non-refoulement is the cornerstone of refugee protection.

The third article concerns Covid-19. Prateek Joinwal considers the impact of Covid-19 on human rights at a global level, as states try to balance the individual rights of citizens against the legitimate public interest in population health. He notes that at the time of writing over 94 countries had passed emergency declarations in the face of Covid-19, 46 of which affected the right to freedom of expression, and 128 of which affected the right to freedom of assembly. He finds that States wishing to circumscribe their liabilities under the multilateral human rights treaties may either rely on their ability with the Convention to limit the application of international convention(s) or may derogate from them altogether, but that it is often unclear which approach has been taken. He suggests that there is a pressing need for international oversight by human rights bodies, which in turn requires states to notify derogations in accordance with procedural guidelines. Not doing so risks allowing authoritarian regimes to unjustly breach their human rights obligations under the cloak of an emergency that has been illegally proclaimed.

In the fourth article Osama Shaaban focusses on accountability for online hate speech. Prior to the Online Harms White Paper and the subsequent Draft Online Safety Bill, victims of social media hate had to resort to civil claims against perpetrators or claims against the social media companies through the E-commerce Directive, both of which had a narrow application and were not helpful to the victims. Civil claims often result in expensive litigation and do not adhere to the needs of the victims; particularly that the social media post(s) be taken down promptly. He analyses the UK’s new regulatory regime, which assigns Ofcom with the responsibility of imposing obligations and issuing penalties on social media companies in cases of non-compliance with the codes of conduct. He suggests both that defined terms in the White Paper and the Online Safety bill would benefit from greater precision and that liability through contract law could and should be placed on social media companies.

We would like to congratulate all our authors on having their work published. The quality of submissions is always very high, but the topicality of these articles made them stand out. We hope you enjoy Volume XI, issue II.

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