259 Fundamental Rights and the Legal Obligations of Business: Book Panel Discussion

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Abstract

This abstract proposes a book panel to discuss my book that will be published around the time of the SLS conference, titled 'Fundamental Rights and the Legal Obligations of Business' (Cambridge University Press). The book addresses the multiple impacts corporations have on fundamental rights and investigates how to determine substantively which legal obligations they have in this realm. In so doing, it straddles the boundary between company law and fundamental rights law as well as constitutional law and international law (thus, potentially fitting several SLS subject sections).

In the book, after providing an examination of the nature and purpose of the corporation, I investigate existing legal models for determining corporate obligations – both within international law and various national jurisdictions. I argue a clear structural similarity surfaces in how courts make decisions about corporate obligations. The book seeks to systematise, justify and develop this emergent ‘multi-factoral model’ through an examination of the key factors that are relevant to reach concrete understandings of corporate obligations. It also defends the use of the proportionality test when determining the negative obligations of corporations and proposes a novel seven-step test for understanding their positive obligations. Given the framework includes an ineliminable degree of judgment when determining their substantive obligations, the book finally considers the legal and institutional reforms - both to domestic corporate law and international law - that are necessary to embed fundamental rights within the corporate structure and the minds of key decision-makers.

In the proposed panel, I will first provide an overview of the key overarching arguments in the book for about 25 mins. Three illustrious panelists will offer analyses and critical comments on specific aspects of the book: Prof Nolan focusing on the general approach, Prof Meyersfeld on positive obligations of corporations; and lastly, Prof Deva on the corporate law reforms proposed.