BERKELEY CENTER ON COMPARATIVE EQUALITY & ANTI-DISCRIMINATION LAW

9 November, 2023

Dear friends and colleagues,

Welcome to the September-October 2023 issue of the electronic journal of the Berkeley Center on Comparative Equality & Anti-Discrimination Law.

The journal is intended to inform our members about interesting new papers in our field (broadly understood, including interdisciplinary approaches), by distributing abstracts and links to the papers.

The journal originated in January 2020, when we began distributing abstracts and links to newly published papers ourselves, instead of engaging the Social Science Research Network to distribute them for us. This allowed us to expand the scope of the scholarly material we publicize and provide a more interesting journal. Currently, the journal is produced bimonthly at Berkeley Law, with co-editors rotating for each issue, with the support of our editorial assistant, Julianna Bass. A wide diversity of jurisdictions and languages are covered. We are also wanting to cover as many different topics as possible within one issue, while keeping the journal to a reasonable length.

This journal brings the BCCE together as a community so we are keen to highlight which articles have been written by BCCE members. For this reason, in this issue for the first-time **articles from BCCE members are identified with the symbol [*] on the left-hand side**. Nevertheless, it takes plenty of time to verify which articles have been written by BCCE members. Therefore, we encourage you to **flag your new publications to us.** If you have ***a new paper*** **in the field of comparative equality and anti-discrimination law**, please send an email to Sara Benedi Lahuerta (**sara.benedilahuerta@ucd.ie**) including as much information as possible (i.e. full bibliographic reference, the link and the abstract).

Since February 2022, we also signpost **[Case law developments]** and **[Legislative developments].** If you are aware of important developments in your jurisdictions, please let us know by sending an email to Sara Benedi Lahuerta (**sara.benedilahuerta@ucd.ie**).

Finally, the Berkeley Center on Comparative Equality & Anti-Discrimination Law website includes a ***Recent Books*** section that showcases books by our members and others in our field. If you have a new book in the field, please contact David Oppenheimer (**doppenheimer@law.berkeley.edu**) and we will list it on the website.

You are welcome to share this journal to anyone you believe would find it interesting.

Thank you for your ongoing support and enjoy reading,

Sara Benedí Lahuerta

Associate editors for this issue:
Lida Ayoubi, Vito Breda, Furaha-Joy Sekai Saungweme, Sara Vancleef
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Anthony, D. and Colin F. "Teaching legal research subversively." *European Journal of Legal Education,* 4, no. 1 (2023): 137 - 159.

This article presents a novel approach to teaching the compulsory law subject Legal Research. It considers that while Legal Research is traditionally a non-substantive subject that does not explain the law, let alone question or critique the law, it can in fact be taught in a way that encourages law students to think critically about legal institutions and the broader social context that gives rise to them. The article explores ways to pursue such legal instruction, with reference to activities administered in a legal research subject at the Law and Justice Faculty of the University of [withheld for peer review], Australia. It concludes that the discipline of legal research presents valuable opportunities for providing law students with a deeper social education in the law.

Druedahl, L. C. "Assessing change of traditions: Teachers' insights on legal education under transformation." *European Journal of Legal Education,* 4, no. 1 (2023): 161-177.

Legal education is moving away from its tradition towards teaching characterized as student-focused, active, collaborative, and reflective. Many different factors co-create such a teaching environment, including teachers' understanding of learning and teaching in practice. One example of a legal education that undergoes such change is at the Faculty of Law at the [institution name deleted to maintain the integrity of the review process] in Denmark. However, knowledge is sparse on the transformation of the teaching, and, therefore, the aim of this study was to investigate the faculty's teachers' views, ambitions, and experiences with teaching practices. A questionnaire was developed and distributed per e-mail to all (768) teachers. The data collection lasted from 3 May 2022 to 23 May 2022. The main findings were that the surveyed teachers mostly had an understanding of learning that favoured student-focused teaching. In addition, case-based teaching is widely applied, but 62.7 per cent of teachers' ended up talking mostly themselves in practice in the teaching setting despite their ambitions for the distribution of talk between students and teacher. The faculty's teaching has changed from solely monologic lectures, but there is still some way for the faculty to reach its goals with reforming its legal education.

Grønved Nielsen, R. "Law teaching for sale: legal shadow education in Denmark from historical and current perspectives." *European Journal of Legal Education,* 4, no. 1 (2023): 71-105.

This study examines the use of supplementary private teaching ('shadow education') within the legal education in Denmark from historical and current perspectives. The aim is to estimate the extent of this phenomenon and understand why law students chose to pay for private teaching services. The study documents that practices that we today would label as shadow education are as old as the University of Copenhagen (1479) and the formal legal education (1736). During a period of around 150 years (1780-1930), the exam-oriented private teaching (manuduction) was, in fact, the backbone of legal education. The sources show that the poor state of the university education, including archaic teaching methods, was the primary reason for this: the private teaching was the market's solution to a broken public education. Educational reforms during the first half of the 20th century challenged the raison d'être of the private manuduction industry, and the Danish welfare state provided the fatal blow in 1960: free university manuduction. However, the private teaching industry has been resurrected in the 21st century in a more corporate, professional, and aggressive form. The study documents that today around 60 percent of the law students have paid for private teaching services during their legal

education. Moreover, the study shows that the quality of the university teaching in no longer the main catalyst, but rather the appeal of radically exam-oriented courses and the students' insecurities, especially the first-years. The study links this development to the emergence of the competition state. Finally, the study concludes that the prevalence of shadow education at any time is a function of the dynamic relationship between the three players: the university, the students, and the private providers.

Jones, E. "Incorporating an affective framework into liberal legal education to achieve the development of a 'better person' and 'good citizen'." *European Journal of Legal Education,* 4, no. 1 (2023): 27-69.

This paper proposes an original framework for the incorporation of the affective domain into liberal legal education, in particular the undergraduate law degree. It argues that the aims of developing both the 'better person' and 'good citizen' can be facilitated by the incorporation of such a framework. The paper critiques liberal legal education's current focus upon narrow cognitive forms of reason and rationality. By excluding affect, legal educators' attempts to foster the insights and growth required to fully achieve the ends of liberal legal education are impeded, even obstructed. This paper advocates a novel affective framework incorporating four core aspects, experiential thinking, emotional authenticity, affective empathy and emotional reflexivity. Incorporating this framework has the potential to achieve the development of both the 'better person' and the 'good citizen' and foster synergies between both. This will significantly enrich liberal legal education and sustain and develop its importance within contemporary society.

[*] Kapur, N. "Empathy, a Hallmark of Equality: Shaping Fearlessness Into Transformative Decision-Making and Teaching." *Asia-Pacific Journal on Human Rights and the Law*, (2023): 165–185.

Whether acting as lawyers, activists, judges, policy makers or academics, there is a void in our equality agendas. This void has enabled the contemporary state to rationalise inequality through the propagation of fear. How can we talk about equality if we do not talk about the current crisis of fear? What shapes our contemporary fears? How might we surpass them? Two contemporary narratives, both from judges, offer the possibility of prevailing over certain kinds of fear to meet equality outcomes. With everything to lose in hostile political circumstances, Justice Attaee's fearlessness materialises from her lived experiences of inequality from where empathy naturally flows for the benefit of women's equality against the hostile tide of both Afghan politics and global betrayal. Having never walked 'in the shoes' of lgbtqia+ persons, fearlessness for Justice Venkatesh, a deeply conservative judge, is put to the test. Taking on the social fears of himself and others, he cultivates the skill of empathy through the rare and unconventional choice of experiential immersion. Both justices serve as examples for creating inclusive experiential courses on empathy and social context within legal/judicial education institutes and practice, where the lives of those most impacted become central to such learning.

Pozzo, B. "Innovative teaching methods to mainstream gender equality in legal education." *European Journal of Legal Education,* 4, no. 1 (2023): 191-219.

In many countries, data show that women are slowly outnumbering men in law schools. Nonetheless, accounts of American law schools often report that women find law school a hostile atmosphere. Further women remain significantly under-represented in positions of leadership and power across sectors of the profession. Legal education has followed different paths in different countries to cope with this reality. So, while US law schools have developed specific program to transform legal education by opening spaces for feminist legal scholarship and have created research centers specifically devoted to Women's and Gender's studies, this appears far from

possible in Europe, where law schools maintain a very traditional curriculum. This article aims at investigating the differences between legal education in the US and Europe, shedding light on the various initiatives taken, to incorporate gender awareness into legal education. The final goal will be to examine innovative legal teaching methods to achieve mainstreaming gender equality in legal education.

Richardson, E. et al. "Democratising case law while teaching Students: writing Wikipedia articles on legal cases." *European Journal of Legal Education,* 4, no. 1 (2023): 107-135.

This article draws on qualitative student feedback and lecturer experience to provide a guide for educators who are interested in creating Wikipedia article-based assignments. Using legal cases as an example, this article details how these assignments can encourage students to deepen their understanding of a topic and consider how knowledge can be communicated effectively. In particular, this article focuses on how educators outside of the United States and Canada can navigate Wikipedia's bureaucracy and how they and their students can contribute information of relevance to smaller jurisdictions on a publicly-accessible repository. This article begins by addressing concerns that educators may have with student use of Wikipedia, while highlighting pedagogical benefits for students who write Wikipedia articles. It goes on to provide a guide for educators who want to create a Wikipedia article writing assignment – in particular, the preparatory steps required to make the assignment effective, how to support students in their writing journey, and how to better ensure that student-authored articles remain available on Wikipedia. This article concludes by encouraging educators to consider using Wikipedia as an educational tool, and to teach their students how they can use Wikipedia article writing to contribute to public knowledge.

Skipper, Y. and Michael F. "The relationship between the sense of belonging, mental wellbeing and stress in students of law and psychology in an English University." *European Journal of Legal Education,* 4, no. 1 (2023): 5-26.

This paper explores how sense of belonging impacts mental wellbeing and stress in students of law and psychology in an English University. N=95 students completed a questionnaire exploring their sense of belonging in their school, wellbeing and stress. Results suggested that sense of belonging predicted higher levels of mental wellbeing and lower levels of stress. Law students felt a lower sense of belonging and wellbeing than psychology students, but both showed similar levels of stress. This suggests that community-based approaches at school level may be a good way to promote positive mental wellbeing in students and that this approach may need to be tailored towards different academic schools.

Age

Gutterman, A. S. "Addressing the Human Rights Challenges of Older Persons with Disabilities." ELDER LAW STUDIES eJOURNAL (2023).

The World Health Organization has reported that approximately 16% of the global population, over 1.3 billion people worldwide, had some form of disability, and that an additional 190 million people (3.8% of people over 15 years of age) experience serious difficulties in functioning normally on a daily basis. In the US, 61 million, or 26% of, adult Americans have some form of disability, and 2 in 5 adults over the age of 65 have a disability. It

has been reported that close to half of all people over the age of 65 in the European Union have some form of disability, putting them at increased risk of neglect, loss of support, abuse and poverty. While the number of persons with disabilities is large, their experiences are diverse and not all people with disabilities are equally disadvantaged. For example, disability does not necessarily imply limited well-being and poverty; however, growing evidence confirms that disability and poverty are highly correlated, and that disability is both a cause and consequence of poverty and disability and poverty reinforce each other in ways that contribute to increased vulnerability and exclusion. […]

This work discusses the wide range of topics that should be covered in any comprehensive campaign to address the human rights challenges of persons with disabilities including the intersection of ableism and ageism driven by ignorance and stigmatization, discrimination in the workplace against older persons with disabilities and the lack of employment opportunities for members of that group, access to adequate physical and mental health services, autonomy and legal capacity, abuse, inclusion of older persons with disabilities in the community (i.e., independent living, accessibility, adequate housing, inclusive and sustainable communities and participation), social protection, access to education and justice and protection of older persons with disabilities during emergencies such as the Covid-19 pandemic.

Gutterman, A. S. "Ageism and Older Women." Social Science Research Network, (2023).

According to the World Bank, the global population of women aged 65 and over as of 2020 was 397 million, representing 55% of the total global population of persons aged 65 and over (722 million) and 10.35% of the world's total female population (compared to 8.5% a decade earlier). In 2009, the UN projected that the number of older women living in less developed regions would increase by 600 million within the period 2010 to 2050.

The World Health Organization has called the "feminization of aging" one of the central challenges to be addressed by its program of "active aging", noting that while women have the advantage in length of life, they are more likely than men to experience domestic violence and discrimination in access to education, income, food, meaningful work, health care, inheritances, social security measures and political power, and thus more likely than men to be poor and to suffer disabilities in older age. The UN Independent Expert on the Enjoyment of All Human Rights by Older Persons has observed that the combination of ageism and sexism has a unique and aggravating effect on discrimination and inequality which leads to older women being disproportionately affected by some health conditions, including depression, and suffering from the impact of gender inequalities in older age that manifest in multiple aspects, including legal status, access and control of property and land, access to credit, and inheritance rights. There is no international treaty or convention that specifically covers the human rights of older persons, but older women have been called out for special attention in various human rights instruments and declarations. The UN Committee on the Elimination of Discrimination against Women has argued that full development and advancement of women, including the enjoyment of human rights by older women, can only be achieved through a "life-cycle approach that recognizes and addresses the different stages of women's lives −from childhood through adolescence, adulthood and old age−", since the cumulative impact of those stages is so readily apparent when assessing the lives and needs of older women from a human rights perspective.

This work discusses ageism and gender and realization of the human rights of older women and covers a range of subjects including legal and policy frameworks; health; housing; work; education and lifelong learning; participation in political and decision-making processes; poverty, economic empowerment and property rights;

participation in community activities; gender stereotyping and ageist myths; caregiving and families; abuse, violence and neglect; access to justice; emergencies; older women as members of various vulnerable sub-groups (e.g., rural older women, refugees and older lesbian, bisexual, transgender and intersex women); intergenerational solidarity; and the role of businesses and entrepreneurs in the realization of the human rights of older women.

Milczarek-Desai, S. "Immigrant Workers' Voices as Catalysts for Reform in the Long-Term Care Industry" Arizona State Law Journal (Fall 2023) Forthcoming; Arizona Legal Studies Discussion Paper No. 23-15.

The COVID-19 pandemic exposed a long-term care crisis that has been brewing for decades. It also offered lessons for much-needed reform to the long-term care industry. One such lesson is that both older Americans and their caregivers experience unnecessary suffering and death due to entrenched industry practices that marginalize long-term care aides, a worker population that is increasingly made up of immigrant and migrant ("im/migrant") women. Even though im/migrant women constitute at least one-third of the long-term care workforce, their perspectives are largely absent from the legal and public health literature and national conversations around long-term care reform. Indeed, to date, no systematic and comprehensive attempt has been made to collect and publish the lived experiences of im/migrant women who work as long-term care aides in the U.S. This Article is the first to use empirical data, collected by the authors through qualitative interviews of im/migrant aides in Arizona, to explore and analyze the failures of state and federal laws and policies, including Arizona's paid sick leave law, to protect long-term care aides and the vulnerable, older, adult population that relies on their caregiving. The Article describes the use of critical race and health law theories to inform the study's design and details the study's methodology and findings. Through the voices of im/migrant women aides, the Article demonstrates that this subset of frontline, essential workers consistently experience violations of state and federal employment and labor laws and face significant barriers to accessing their workers' rights, including paid sick time and protection from employer retaliation. The study's findings show that im/migrant aides work in conditions that are unsafe not only for them but also for their patients. Together, these failures contribute to poor quality of care, chronic labor shortages, and increased potential for harm in future public health emergencies. The Article draws on im/migrant women's voices to make recommendations for changes to laws and policies in Arizona and nationwide to help these workers and a rapidly growing, aging, American population. This research fills a critical gap in the literature regarding the shortcomings of workplace laws and healthcare policies in long-term care settings. It comes at a moment when the country's long-term care system must be changed or face a crisis of epic proportions that will leave older adults and their loved ones with few, if any, options.

Case Law Commentary

Bergqvist, C. "What to Consider by Object Restriction when it Comes to Verticals?" *Social Science Research Network*, (2023).

While consensus positions are emerging on what to accept as restrictions by object when it comes to horizontal arrangements, little consideration has been given to verticals. Presumably, as enforcers lost interest in these several decades ago. But winds might be changing, and it remains that case law has identified a group of vertical

restrictions as detrimental to the free market as horizontal hardcore arrangements. In this article, an attempt to capture what to accept as vertical object restrictions will be made, providing guidance for the enforcers' renewed interest in the matter.

Sunstein, C. R. "The Invention of Colorblindness." *Discrimination, Law & Justice Ejournal* 24, no. 233: Jul 31, 2023.

Do affirmative action programs violate the Equal Protection Clause? To answer that question, Students For Fair Admissions v. President and Fellows of Harvard College offers a simple narrative with three chapters: (1) in 1868, the Fourteenth Amendment flatly prohibited all racial classifications; (2) from the late 1870s until 1954, the nation and the Court inexplicably departed from that clear constitutional command, which somehow got lost; and (3) from 1954 to the present, Brown v. Board of Education and its successors recovered the Fourteenth Amendment's "core purpose," which was colorblindness. The narrative is a concoction; it slides over intense constitutional struggles, social movements, and multiple forms of judicial creativity between 1868 and 1954, and also between 1954 and the present. At the same time, it is both important and difficult to identify the theory of constitutional interpretation at work in Students For Fair Admissions. It is clearly not textualist. Nor is it originalist; Justice Thomas, joined by no one, was the only member of the Court to offer an originalist argument in favor of the result. The operating theory of the Court's opinion is best described as Dworkinian, as the Court sought both to "fit" and to "justify" the existing legal materials. But in terms of fit, Students For Fair Admissions runs into serious objections; the ruling is flatly inconsistent with both Bakke and Gratz (and essentially overrules them). In terms of justification, Students For Fair Admissions also runs into serious objections; the colorblindness principle is exceedingly difficult to defend as a matter of principle.

COVID 19

[*] Gupta, S. "Non-Refoulement During a Pandemic – With a Contextual Analysis of Border Closures Imposed by the EU, the US and India." *Social Science Research Network,* (2022).

Non-refoulement is the most basic protection afforded to a refugee. Despite agreeing in theory, States often ignore this principle in practice ending up refouling refugees from their territories or frontiers. In times of COVID-19 crisis, refugees require asylum and healthcare not only as a human right but also to prevent the further spread of the virus. Violation of this principle jeopardises both. This article analyses the scope and extent of the principle of non-refoulement in refugee law, customary international law and human rights law. It also evaluates the 'national security' exception and whether it could be invoked to justify refoulement on the basis of a public health emergency. It probes the validity of border closures imposed by the EU, US and India in light of their respective commitments to international treaty and customary law. The article concludes by summarizing the analysis and suggesting alternatives to violation of non-refoulement obligations.

Kohn, Nina A., Adrianna Duggan, Justin Cole, and Nada Alijassar. "Using What We Have: How Existing Legal Authorities Can Help Fix America's Nursing Home Crisis." *William & Mary Law Review 6* (forthcoming), (2023/2024).

The COVID-19 pandemic exposed systemic quality-of-care problems in American nursing homes as well as the deadly consequences of a regulatory system that has enabled nursing homes to divert funds needed for care to profit. Policy experts have responded by urging regulators to improve nursing-home oversight practices and by calling for new regulatory and statutory authority to increase accountability. These calls, however, have been met with sharp political headwinds. This Article suggests a path around the political impasse. Specifically, it identifies and explores four opportunities to leverage existing statutory schemes to create stronger incentives for nursing homes to provide high-quality care. It then explores how politics, administrative complexity, and ageism have come together to prevent this existing authority from being used to its full potential. It concludes by situating the current regulatory failure to hold nursing homes accountable in the context of a larger discussion about the costs of federalism in the health care arena.

Carabetta, G. "Vaccination Mandates and the Employee's Duty to Obey Lawful and Reasonable Directions" Australian Business Law Review Volume 50 No 3 (2023).

On 3 December 2021, the Full Bench of the Fair Work Commission (Justice Ross, Vice President Catanzariti, Deputy President Saunders, Commissioner O'Neill and Commissioner Matheson) handed down its decision in Construction, Forestry, Maritime, Mining and Energy Union v Mt Arthur Coal Pty Ltd (Mt Arthur Coal). The decision concerned a COVID-19 vaccine mandate imposed by Mt Arthur Coal Pty Ltd (Mt Arthur). The mandate gave employees a month to obtain a first COVID-19 vaccine, in which time the Construction, Forestry, Maritime Mining and Energy Union (CFMMEU) brought a challenge to the direction. They were successful, with the Commission ultimately striking down the direction, but only on very narrow grounds relating to a failure to consult. The decision – the first regarding an employer COVID-19 mandate not supported by a public health order – offers insights from a five-member bench about the views of the Commission on vaccine mandates issued by employers, helped by the narrow set of issues in dispute. Neither side contested the science on COVID-19. Nor was there any suggestion that the direction was lawful (or unlawful) on the basis of government health orders, contract or the relevant enterprise agreement. Instead, the only question was whether or not the employer's vaccine mandate was a “lawful and reasonable” direction. Ultimately that question turned on whether in introducing the mandate the employer had met its consultation obligations under workplace health and safety laws.2 However, beyond addressing important questions about the content of those obligations, the decision reaffirms a number of general propositions relating to the application and scope of the implied duty. It ultimately also provides useful guidance for employers and employees regarding the legalities of mandatory workplace vaccination policies specifically.

Criminal Law and Discrimination

Condon, J. B. "#MeToo in Prison." *Washington Law Review 9*8, no. 2, 2023. *Seton Hall Law School Legal Studies Research* No. Forthcoming.

For American women and nonbinary people held in women’s prisons, sexual violence by state actors is, and has always been, part of imprisonment. For centuries within American women’s prisons, state actors have assaulted, traumatized, and subordinated the vulnerable people held there. Twenty years after passage of the Prison Rape Elimination Act (PREA), women who are incarcerated still face shocking levels of sexual abuse, harassment, and violence notwithstanding the law and policies that purport to address this harm. These

conditions often persist despite officer firings, criminal prosecutions, and civil liability, and remain prevalent even during a #MeToo era that beckons greater intolerance for sexual harassment and abuse outside of prison. Just as #MeToo helped expose the systemic gender injustice that sustains abuse in the workplace and other areas of public life, the intractability of the sexual abuse crisis for incarcerated women demands recognition of the inequality and power imbalance at its root. PREA and reform discourse treats this harm, however, as an unwanted byproduct of an otherwise constitutional system of criminal justice. And the treatment of people in women's prisons remains largely an afterthought in the response to the broader carceral sexual violence crisis. Those responses treat prison sexual abuse as a "conditions" problem capable of being remedied, no matter how persistent and endemic. This Article rejects that prevailing account and describes the ways in which women's prisons create and exploit gender subordination resulting in more sexual violence and gender-based harm. As traced in this Article, Edna Mahan Prison in New Jersey serves as a dramatic example of the sordid history of women's prisons in the United States. At one time, the facility operated as women-led radical prison without bars and locks. But once it operated like a traditional prison, sexual abuse plagued the facility for decades. New Jersey's Governor announced plans to finally shutter the prison in 2020 after a sexual abuse crisis dominated headlines—the final blow to the progressive vision of its former reform-minded supervisor and namesake. Women's experiences are often ignored in conversations about mass incarceration even though women are the fastest-growing segment of the incarcerated population and experience the highest rates of prison sexual violence as a group. The harm inflicted in women's prisons differs from the crisis affecting men in that incarcerated women experience sexual abuse nearly exclusively at the hands of male correctional officers and staff. It thus mirrors the gender subordinating nature of sexual abuse and violence in the world outside of prisons even while it also thrives on the power dynamics constructed by prisons. This Article foregrounds those often overlooked concerns and identifies lessons from #MeToo that are necessary to end these sites of gender-based harm.

Disability

[*] Constantino Caycho, R.A. and Bregaglio Lazarte, R.A."A Four-Speed Reform: A Typology for Legal Capacity Reforms in Latin American Countries". *Laws* 2023, 12, 45.

In the past few years, Latin American countries have started to enact changes in their legal capacity regulations regarding persons with disabilities. However, even when these changes started over eight years ago, there were few to no analyses on the matter. In addition, there is no encompassing theory or typology on how these reforms happen and on their effects. In the present paper, we propose two axes of analysis for the reforms: enforceability and compliance with Article 12 of the CRPD. This matrix allows for four kinds of reforms: incipient, formal, conciliatory and radical. Using this matrix, we examined the legislative changes in Argentina, Brazil, Colombia, Costa Rica, the Dominican Republic, El Salvador, Mexico, Nicaragua and Peru. Incipient reforms (Mexico) are not that effective but can lead to serious later change. Formal reforms (the Dominican Republic, El Salvador and Nicaragua) have few to no effects. Conciliatory reforms (Argentina, Brazil and Costa Rica) are a legislative compromise that allows for progressive change. Finally, radical reforms create encompassing change that is good but might create problems in the implementation.

Gutterman, A. S. "Definitions and Models of Disability." *Discrimination, Law & Justice Ejournal* 24, No. 233: Jul 31, 2023.

The World Health Organization ("WHO") has reported that approximately 16% of the global population, over 1.3 billion people worldwide, have some form of disability, and that an additional 190 million people (3.8% of people over 15 years of age) experience serious difficulties in functioning normally daily. There is no single definition of disability, and WHO noted that defining disability is complicated since it is "complex, dynamic, multidimensional and contested". This chapter discusses various definitions of disability including concepts such as impairments, activity limitations and participation restrictions, and the two predominate social structure models—medical and social—that are used when discussing disability and identifying and combatting discrimination against persons with disabilities.

Lorr, S. H. "Disabling Families." *Discrimination, Law & Justice Ejournal* 24, No. 233: Jul 31, 2023.

The family regulation system has been the subject of intense and ongoing critique. Scholars, activists, social workers, and those with lived experience have highlighted the harms inflicted by the system on the families—primarily Black, brown, Native, and poor—that it ostensibly aims to protect. Simultaneously, disability law scholars have made critical interventions in doctrinal law using a disability lens while directing attention to social injustices that produce, or contribute to the production, of disability. This Article weaves together these distinct strands of academic inquiry, arguing that the family regulation system itself produces disability. Thus, this Article builds upon both the growing cannon of critical scholarship on family regulation and the recent eruption of disability law scholarship calling for—and making—critical intervention in doctrinal law using a disability lens. […] This Article documents how the case law and outcomes arising from the family regulation system often contribute to the ongoing pathology of people with disabilities. It argues, however, that while disability is often stigmatized, it is not a per se negative identity, social group or label. To this end, this Article concludes by exploring how disability itself can be a force that disrupts the harms produced by the family regulation system. It suggests that disability can be a source of pride, family strength, and personal autonomy. It conceptualizes the act of parenting with a disability—by its very ordinary nature—as a form of resistance and rebellion. Finally, it offers practical and legal strategies for disrupting the production of disability in the family regulation system while urging the claiming of disability as a positive identity.

Enforcement, Access to Justice, Justice System

Iwan-Sojka, D. "Procedural Aspects of Addressing Algorithmic Discrimination – an Era of (Post-) Global Interdependence?" Discrimination, Law & Justice Ejournal. Vol. 24, No. 259: Sep 13, 2023.

The paper proposes an analytical model demonstrating interdependencies between human rights in digital areas (cyberspace) and the scant regulations of jurisdiction over algorithmic discrimination. By utilizing international human rights law incorporated into domestic laws, the paper asks whether a lack of human rights compliance in cyberspace results from procedural obstacles. We assume that there are human rights violations in cyberspace, but there are limited possibilities, if any, to claim these violations as long as human rights laws are not integrated to domestic laws. If, on the contrary, public and private interests become interdependent, then procedural obstacles to claiming algorithmic discrimination can be reduced. The paper presents

claims of discrimination in deploying algorithmic decision-making systems in Dutch and US law, be it by a state or a business entity. Then, we evaluate these frameworks through procedural lenses to conclude whether claiming algorithmic discrimination is enforceable.

Johnson, Vida. "White Supremacy from the Bench." *Lewis & Clark Law Review 27*, no. 39 (2023).

Judges make important decisions in millions of cases a year across the country. Unlike other institutional players and unlike parties and their attorneys, judges are the only player in our adversarial legal system that are by design ostensibly neutral, impartial, and without bias.Unfortunately, that legal fiction is not fact. Some judges hold racial biases. A judge in Texas used racial slurs to describe Mexicans in his state in 2020. A white judge in Louisiana in 2020 referred to a court deputy by the N-word, a white Colorado judge also used n-word in a conversation with court staff in 2020. A federal judge in Texas stated publicly that Black and Latinos are more violent than whites. A Jacksonville, FL judge said that Black people should go "back to Africa". An Ohio judge referred to SARS-COVID-2 as the "China Virus". In this article, I have documented scores of instances of racial bias by judges since the year 2000.

Most judges, with years of education beyond that of the average American and with knowledge as to how racial discrimination gets litigated, would not be so careless as to say explicitly racist things so that members of the public can have access to their words. We have to assume that the distressing stories of racism by judges represent the feelings of many more judges.

[*] Ringelheim, R. and Lejeune, A. "Study on Antidiscrimination Legal Mobilization in Belgium." Law & Social Inquiry, November 2022, 25 Jul 2023.

This article aims to explain the differential use of litigation by social movements pursuing social change. While previous studies have sought to compare non-governmental organizations (NGOs) that turn to litigation with those that do not, we study organizations that have all resorted at least once to legal action. Taking Belgium and the field of antidiscrimination as a case study, our research confirms the findings of previous literature that the characteristics of the legal environment do impact on the choice of organizations whether or not to go to court. But we also find that legal action is used differentially by NGOs depending on two factors in particular: their position as an insider or outsider in the political realm and their possession of legal resources. Based on a quantitative measure of legal actions initiated by NGOs and interviews with activists, we propose a typology of civil society organizations—which we label "experienced litigants," "occasional litigants," and "litigants by necessity"—that could be transposed to other contexts and other types of interest groups.

[*]Ma, G. "Judicial Perspectives on Transforming Equality." Asia-Pacific Journal on Human Rights and the Law,160–164, 31 Aug 2023.

In law, equality is the antithesis of discrimination. As in many other areas of human rights law, however, the right balance very often has to be achieved between competing arguments which are reasonable on their face but which pull in different directions. How does the law achieve this? Constitutional instruments and statutes of course set out some principles and guidelines, but it is largely left to the courts to determine where the balance lies in any given situation. Such balance can only be reached through a principled, not arbitrary,

approach that is ultimately based on the concept of dignity. Such principled approach includes the proportionality exercise.

Housing Discrimination

Peng Nie, X. et al. "Housing Unaffordability and Adolescent Academic Achievement in Urban China" . *IZA Discussion Paper,* no. 16386. *Economic Inequality & The Law Ejournal* 17, no. 121: Sep 13, 2023.

Rising housing prices in China have placed significant financial strain on many households, pushing them into the quagmire of housing unaffordability. Such economic pressures may have repercussions beyond just shelter, potentially impacting the cognitive development of children. Our study, based on longitudinal data from the 2010-2018 China Family Panel Studies, analyses the effect of housing unaffordability on the academic achievements of Chinese adolescents aged 10-15. To address the inherent endogeneity issues associated with housing unaffordability, we employed a fixed effects instrumental variable approach. Our findings reveal that housing unaffordability leads to a decline in academic performance for these adolescents by an average of 12%. This negative effect is more pronounced for specific groups: rural-to-urban migrant families, girls who have male siblings, families who rent, older adolescents (aged 13 to 18), and those residing in less developed regions. Moreover, the results suggest that housing unaffordability adversely affects academic performance indirectly by diminishing household expenditures in critical areas. When housing becomes unaffordable, families have less to spend on food, social capital, and education, further exacerbating the challenges faced by their adolescent children in the academic arena.

Intersectionality

[*] Atrey, A. "A Prioritarian Account of Gender Equality." In: Rebecca J. Cook, ed., Frontiers of Gender Equality: Transnational Legal Perspectives, University of Pennsylvania Press, 2023.

This chapter argues for a prioritarian account of gender equality through intersectionality. While human rights law typically avoids priorities, priorities are important to reduce inequality gaps and advance substantive equality. Centering the needs of the most disadvantaged groups helps benefit all disadvantaged groups. Intersectionality possesses both strategic and epistemic priorities. Strategically, focusing on the needs of the most disadvantaged groups transforms hierarchical structures. Epistemically, intersectional categories explain and represent constituent forms of disadvantage. General Recommendation No. 37 on climate change signals priority's potential to advance CEDAW's equality goals, directing States to accord highest priority to the most vulnerable groups of women. While CEDAW recognizes intersectionality, it stops short of saying intersectional concerns merit priority. General Recommendation No. 24 on health care and Article 4 on special measures implicitly prioritize vulnerable groups. Violence against women also receives priority. Alyne da Silva Pimentel Teixeira v. Brazil appealed for priority toward Afro-Brazilian and poor women in health policy, but the Committee focused on universal women's health care. CEDAW initially centered women as a category but now recognizes women's multiple identities shape discrimination. General Recommendation No. 37 explicitly prioritizes vulnerable groups, requiring general an specific measures to redress intersectional discrimination.

Intersectionality has explanatory priority, representing constituent forms of disadvantage. A prioritarian approach is important to substantively address the worst forms of gender inequality. Priority attaches not to a single metric but to a fuller notion of equality achieved when all disadvantage is overturned. Prioritizing intersectional discrimination accelerates equality. A fuller account of priority would reflect actual priorities across contexts and specify improvements in substantive equality.

DesRosiers,L. "Out of Bounds: Gender Outlaws, Immigration & The Limits of Assimilation." 24 Geo. J. Gender & L. 117 (2022).

Queer and transgender Americans have secured substantial federal protections in the past decade, from United States v. Windsor's takedown of the Defense of Marriage Act to Obergefell v. Hodges's guarantee of marriage equality to Bostock v. Clayton's affirmation of the inclusion of queer and transgender identity in Title VII protections. Other recent developments, including new state-level laws protecting the rights of trans/nonbinary individuals, as well as a federal embrace of third gender markers on United States passports, have expanded foundational protections. Although mainstream acceptance of queer and trans identities has grown substantially in the past several decades, the Supreme Court's 2022 Dobbs v. Jackson Women's Health decision highlights the precarity of these protections. Yet queer and trans people continue to confront regressive homophobic and transphobic laws and policies as well as an epidemic of private and public violence and discrimination throughout the United States. Despite these protections, queer and trans noncitizens confront a very different regime than the one their United States citizen counterparts face. Recent developments have opened doors to queer and transgender noncitizens, such as access to marriage-based immigration; yet these avenues primarily benefit gay cisgender individuals, who can align with the mandates of a cisheterosexist immigration regime, while continuing to exclude those who are less able--or less willing-to assimilate into the cisheteronormative American ideal. This Article examines how the expansion of cisheteronormatively anchored rights leaves out queer and trans noncitizens along two axes: access to immigration benefits and access to identity. After reviewing these two axes along which queer and trans noncitizens experience disparate treatment, the Article concludes that assimilationist advocacy strategies for rights of queer and trans persons have led to disparities between queer and trans noncitizens and citizens. This Article further posits that reimagining systems to center the needs of queer and trans noncitizens reveals the liberatory possibilities of the abolition of state regulation of gender and sexuality, leading to a safer and more equitable landscape.

[*] Ganty, S. and [*] De Vries, K. "Non-Discrimination in European Social Security Law: Exploring Safeguards Against Gender and Racial Discrimination." in Gijsbert Vonk and Frans Penning (eds.) Research Handbook on European Social Security Law (E.E. 2023).

This chapter addresses the principle of non-discrimination as a principle of European social security law. It focuses on discrimination on the grounds of race and gender, two axes of inequality that, despite many efforts to the contrary, continue to pervade legal and social relations in all Member States including in the field of social security. The definition of social security used in this chapter is a broad one. We first offer a tour d'horizon of EU non-discrimination law whereby we identify four 'clusters' of non-discrimination and equality norms relevant to the field of social security. We then zoom in on our chosen topics of gender discrimination and racial discrimination. As for gender discrimination, we focus on four themes reflecting recent developments and topics of current debate: 1) the protection of trans, non-binary and intersex people, 2) the position of part-time workers, 3) the protection of carers and the new Work-life balance Directive

and 4) exceptions to the principle of equal treatment and affirmative action. Regarding racial discrimination, the principal instrument discussed is the Racial Equality Directive which covers discrimination across the full spectrum of social benefits. We assess the protection offered by the Directive (as well as some other instruments) in light of three current challenges to racial equality in social security: the use of nationality and immigration status to determine eligibility for rights and benefits, the introduction of integration requirements and the rise of the 'digital welfare state'. Through our analysis, we identify strong points but also gaps in the existing legal instruments. Discussing gender and racial discrimination together in one chapter finally allows us to compare the respective legal frameworks and to point at the different speeds with which they are developing. Although neither framework is perfect, we do see that the CJEU has often taken an active role developing case law on gender discrimination in relation to social security, a role that it has not played to the same where discrimination on the ground of racial or ethnic origin is concerned.

Herrero-Arias, R. et al. "Experiences and constructions of womanhood and motherhood among Spanish Roma women." *European Journal of Women's Studies 30,* no. 2 (2023).

Roma women face multiple inequalities at the intersections of ethnicity, gender, and class. Framed by Romani feminism, studies have explored Roma women's own perspectives and experiences, drawing attention to the diversity within this group and the specificities of their social position due to the complex forms of discrimination they face. Drawing on interviews with Spanish Roma women, this article contributes to and extends this strand of research by exploring Roma women's experiences and constructions of womanhood and motherhood. We found the construction of womanhood to be focused on the effective management of responsibilities, particularly caring and household tasks. Moreover, Roma women defined motherhood as a valued experience for them and their communities. A homemaker position was associated with mattering, something, we argue, which needs to be understood in the context of racial hostility, exclusion, and precarity in which Roma women live.

Hodson, L. "Gender Equality Untethered? CEDAW's Contribution to Intersectionality." In: Rebecca J. Cook, ed., Frontiers of Gender Equality: Transnational Legal Perspectives, University of Pennsylvania Press, 2023.

This chapter examines how the CEDAW Committee has adopted intersectionality at the normative level, yet it inconsistently applies intersectional analysis in practice. The CEDAW Convention aims to eliminate discrimination against women and achieve formal equality and to commit to substantive equality by requiring states to address social and cultural patterns that contribute to women's subordination. The Committee has adopted a multidimensional understanding of substantive equality and has increasingly recognized intersectional discrimination in its General Recommendations, such as General Recommendation 28 on core obligations. However, applying intersectionality to specific claims remains challenging, for example in two areas of the Committee's jurisprudence: domestic violence and non-refoulement. In domestic violence cases, the Committee often fails to explore how factors like disability, nationality and motherhood transform victims' experiences of violence. Despite the systemic nature of gender-based violence in countries of origin, non-refoulement claims not to be returned to those countries where the violence occurred are mostly declared inadmissible. Structural intersectional analysis helps uncover patterns of group disadvantage and injustice, yet the Committee tends to view multiple identities as compounding victims' vulnerabilities rather than transforming their experiences of discrimination. Two exceptions in the non-refoulement jurisprudence, R.S.A.A. v. Denmark and A. v. Denmark, demonstrate that attending to individuals' positioning can influence admissibility decisions. While the Committee makes intersectionality a normative priority, implementing

consistent intersectional analysis in practice remains a challenge. Achieving CEDAW's transformative equality vision requires a rigorous intersectional approach that recognizes women's diversity and the complex ways in which discrimination is experienced.

Verman, A. and Rehaag, S. "Transgender Erasure: Barriers Facing Transgender Refugees in Canada." *McGill Law Journal*, Forthcoming.

This paper explores the experiences of transgender refugee claimants in Canada's refugee status determination system, using mixed methods: quantitative analysis of data obtained from the Immigration and Refugee Board (IRB), reviews of published and unpublished decisions, country condition documentation packages and IRB guidelines, as well as interviews with refugee lawyers. Using these methods, we explore how credibility arises in transgender refugee claims, noting the impact of medicalization and country conditions materials on transgender claims, and drawing parallels between medical gatekeeping and credibility assessments in refugee claims. We identify potential explanations for low recorded numbers of transgender claims as rooted in data-gathering and decision-making practices that are misaligned with transgender experiences, and we offer policy recommendations to overcome this mismatch. Though transgender refugee claims appear to be largely successful in recent years, longstanding patterns of exclusion and erasure as policy nevertheless lead many transgender claimants to experience the refugee determination process as traumatic and transphobic, resulting in unaccounted-for complications and challenges to practice.

Migration

Gaona J. M. "The Perceptional Gap: Rethinking the 'Migrant Threat." *New York University Journal of Legislation and Public Policy 25*, no. 1 (2023): 103-165.

Modern policies on refugee protection increasingly derive from a defining conceptualization: the migrant threat. This conceptualization ensues from a perceptional gap that portrays certain migrants as undesirable for developed host countries. This gap is built on natural and unnatural distortions of reality leading to patterns of distrust, dehumanization, discrimination, and criminalization of migrants. This trend appears related to the race, religion, and nationality of migrants perceived as undesirable and treated as security, economic, and cultural identity threats to developed host countries. The resulting institutional responses prescribe the detention, exclusion, and refoulement of these migrants and neglect their most basic human rights and international refugee law protections. Yet both differences in reception and treatment of different migrant groups and data on terrorism, economic integration, and cultural assimilation debunk perceptional-gap claims that migrants are too dangerous, too many, too expensive, and too different. Drawing on an interdisciplinary analysis of perception, this Article explores the sociopolitical perception of migrants as threats and the rationale behind institutional responses.

Miscellanea

Corbett, W. R., "Reasonably Accommodating Employment Discrimination Law." *EMPLOYMENT LAW Ejournal* 17, no. 78: Aug 2, 2023.

The law of accommodations within employment discrimination law evolved significantly in 2023. The Pregnant Workers Fairness Act (PWFA) was enacted by Congress and signed by President Biden in 2022, and it became effective on June 27, 2023. The Act creates a statutory duty for covered employers to make reasonable accommodations for pregnancy, childbirth, and related medical conditions. Two days after the effective date of the PWFA, the Supreme Court rendered a decision in Groff v. DeJoy in which the Court clarified the meaning of the "undue hardship" limitation on the duty of employers under Title VII to reasonably accommodate religious practices of employees that conflict with workplace requirements. The clarified standard generally expands the duty of religious accommodation. The PWFA and the Groff decision in 2023 hearken back to the developments in accommodations law in 2015 in two Supreme Court decisions: Young v. United Parcel Service, Inc. and EEOC v. Abercrombie & Fitch Stores, Inc., in which the Court expanded the duties of accommodation for pregnancy and religion. Unfortunately, the evolution of the law of accommodations, proceeding by a series of back-and-forth pronouncements of law by Congress and the Supreme Court has produced the same kind of uncertainties and asymmetries that the same approach has produced in employment discrimination law generally. Thus, accommodations law has become a microcosm of the incoherent and almost chaotic body of employment discrimination law. The time is long past due for Congress to reasonably accommodate federal employment discrimination law by comprehensively revising it.

[*] Loper, K. "Introduction to the Special Section on Contemporary Challenges in Comparative Equality Law." *Asia-Pacific Journal on Human Rights and the Law*, (2023): 155–159.

This special section on contemporary challenges in comparative equality law contains three essays by prominent legal practitioners and scholars who presented in plenary sessions at the Berkeley Center on Comparative Equality and Anti-discrimination Law's Annual Conference, hosted by the University of Hong Kong, Faculty of Law in June 2022 (bcce conference).1 The conference – Comparative Equality Law in a Post-pandemic World – gathered participants from six continents online for three days of plenary and parallel sessions focusing on the causes and nature of ongoing inequalities amplified by the covid-19 pandemic. The discussions reflected on deep-seated structural discrimination, explored a growing backlash and the dismantling of hard-won legal reforms, and contemplated possibilities for crafting effective responses moving forward in a vastly unequal post-pandemic world.

Each of the three contributions reproduced in the following pages wrestles with significant contemporary challenges to equality and equality law at the global, regional, and domestic levels. The authors remind us of the enduring attributes of equality law while also proposing new, creative approaches. To borrow the title of one of the plenary panel discussions at the bcce conference, all three authors – from different angles – invite us to re-examine equality law and 'Get Equality Out of the Box!' […]

Pay Equity

[*] Benedi Lahuerta, S., Rejchrt, P. and [*] Patrick, P. "The UK Pay Transparency Regulations: apparent transparency without accountability?." *Legal Studies* (2023): 1-24. Published online: 26 May 2023

The UK enacted its first legal measure to address gender pay inequity, the Equal Pay Act 1970, more than 50 years ago. Yet, in 2021, the gender pay gap (GPG) still stood at 15.4%. Departing from the remedial and individual approach that characterises equal pay legislation, the 2017 Gender Pay Gap Information Regulations (the Regulations) require private and voluntary sector organisations with 250+ employees to annually publish pay data broken down by gender. The long-term aspiration of the Regulations is to contribute to closing the GPG within a generation. It is also hoped that they will encourage the public disclosure of pay data and changes in workplace policies to reduce organisational GPGs (immediate aims) and improve employers' accountability (underlying aim). This paper considers whether the Regulations have what it takes to meet those immediate and underlying aims. Our assessment framework is built on the premise that for public disclosure to be useful and for employers to tackle the causes of the GPG, the information reported must be of sufficient quality, meaningful and relevant. The paper draws on both doctrinal analysis and empirical data reported by FTSE 100 Index companies to assess the Regulations and determine whether they hold the potential to meet those aims.

Cullen, Z. B. "Is Pay Transparency Good?". No. w31060. *National Bureau of Economic Research*, 2023.

Countries around the world are enacting pay transparency policies to combat pay discrimination. 71% of OECD countries have done so since 2000. Most are enacting transparency horizontally, revealing pay between co-workers of similar seniority within a firm. While these policies have narrowed co-worker wage gaps, they have also lead to counterproductive peer comparisons and caused employers to bargain more aggressively, lowering average wages. Other pay transparency policies, without directly targeting discrimination, have benefited workers by addressing broader information frictions in the labor market. Vertical pay transparency policies reveal to workers pay differences across different levels of seniority. Empirical evidence suggests these policies can lead to more accurate and more optimistic beliefs about earnings potential, increasing employee motivation and productivity. Cross-firm pay transparency policies reveal wage differences across employers. These policies have encouraged workers to seek jobs at higher paying firms, negotiate higher pay, and sharpened wage competition between employers. We discuss the evidence on pay transparency's effects, and open questions.

Owaslt, M. M., Rosenfield, J and Denice, P. "Power and Pay Secrecy." *Indiana Law Journal* 99, Forthcoming.

The legal momentum toward pay transparency is widespread and fast-moving. Since 2010, over a dozen states have passed laws prohibiting employers from telling workers they may not talk about wages. Proponents see these and related transparency laws as crucial steps to combat sex- and race-based pay discrimination in the workplace. But do state anti-secrecy laws actually reduce pay secrecy in the first place? That basic question remains largely unexplored. This Article fills the gap through a unique national survey that includes information about pay discussion rules and a range of other relevant employer and employee characteristics across the fifty states. We find that just under half of all workers in states that have prohibited pay secrecy rules still confront one at work. Surprisingly, this is only slightly less than the fraction of workers who are subject to pay secrecy rules in states without a law against them. Moreover, employers seem to react to state laws not by removing the expectation that workers should remain silent but by making their pay secrecy rules more

informal — though no less illegal. Our analyses also show that state variations in the types and severities of employer penalties for violating the law have little overall impact on the prevalence or formality of pay secrecy rules, with the notable exception of California and its especially comprehensive remedies. But even in California, 4 in 10 workers remain subject to an illegal pay secrecy policy. Though employment law enforcement is notoriously poor, pay secrecy rules seem uniquely durable — and state pay secrecy bans uniquely futile. In considering why, we document the old and new arguments used to understand secrecy's persistence. But even in combination these factors are not adequately explanatory. We contend instead that the dominant driver is employer power, in two forms. The first, coercive power, is widely documented and understood. The second, known as legitimating power, is not. We find strong evidence for this latter form and suggest it is the key to explaining the pervasiveness of illegal pay secrecy rules. The insight helps critique the newest efforts to legislate transparency, like mandated pay ranges in job postings. Most importantly, a legitimate power lens clarifies the best paths towards nationwide pay transparency in the future.

Positive Action and Positive Duties

Cooper, D. "What Does Gender Equality Need? Revisiting the Formal and Informal in Feminist Legal Politics." *Journal of Law and Society* 49, no. 4 (2022): 800-823.

This article explores the political conflict over reforming how sex and gender categories are used in British law, focusing on the speculative legal proposal to 'decertify' sex and gender. Three interconnected arguments are advanced. First, diverging views on decertification are both about and seek to marshal competing perspectives on the value and risks of formalization and its undoing. Second, understanding these views, and decertification more generally, benefits from an account of the formal and informal as interconnected movements of (un)settling, (un)acknowledgement, system (un)intelligibility, and (non-)deference which remains irreducible to the presence or absence of state and law. Third, while formalization can pin down responsibilities and entitlements, it can also fix unequal and exclusionary status relationships. Focusing on positive action in the final part of the article, I consider how movements of formalization and informalization interrelate and the choices available, in conditions of decertification, if positive action is to counter gender inequality.

Lukas, K. and [*] O'Cinneide, C. "Gender Equality within the Framework of the European Social Charter" In: Rebecca J. Cook, ed., Frontiers of Gender Equality: Transnational Legal Perspectives, University of Pennsylvania Press, 2023.

This chapter analyzes how the European Social Charter framework integrates gender equality and social rights protection. It focuses on the European Committee of Social Rights' jurisprudence, which represents the most developed social rights norms internationally. The Charter recognizes specific social rights for women and applies general rights equally to women. While its original 1961 text adopted a paternalistic approach, the revised 1996 text reflects a stronger commitment to substantive gender equality. The Committee interprets Charter rights as imposing positive obligations on states to redress disadvantage, address stereotypes, facilitate participation, and accommodate difference. This reflects a four-dimensional model of substantive equality. The Committee applies this approach to specific gender provisions on maternity protection, equal pay, and nondiscrimination. It has shown openness to intersectional analysis in some collective complaints. The equal pay complaints highlighted states' positive duties to promote equal pay. The abortion access case applied a

social rights lens and identified intersectional discrimination based on gender, health, location and socioeconomic status. The maternity services case involved indirect racial discrimination against Romani women. While the Committee's gender jurisprudence is still underdeveloped, it affirms the importance of gender equality within social rights protection. The collective complaints mechanism highlights structural inequalities and enables intersectional analysis. The Committee's transformative potential shows the value of overlapping human rights mechanisms for gender equality. More robust social rights standards could help states achieve substantive equality. The Committee's approach merits wider consideration.

Race, Ethnicity, and National Origin

Akinkugbe, O. D. "Race & International Investment Law: On the Possibility of Reform and Non-Retrenchment." *American Journal of International Law* 117, no. 3 (2023): 535-547.

The international investment regime is in flux. The mainstream practice of investment law and arbitration works on the basis of the regime's foundations in contract and property law. However, critical scholarship in the field has unearthed the coloniality of power that permeates both the practice of international investment law and the current reform exercise led by the United Nations Commission on International Trade Law (UNCITRAL) Working Group III. These critical scholars warn of the imminent reproduction and entrenchment of the systemic inequities, power asymmetries, and investment law's investor-state dispute settlement (ISDS) regime which is skewed against post-colonial host states. The two books under review offer a range of thought-provoking approaches for analyzing the past, present, and future of investment law. This Review Essay categorizes these books into two modes of critical scholarship on international investment law: moderate and radical. In Part II, I flesh out the conceptual categories of moderate and radical critique. In Part III, I analyze the books under review through the lens of these two conceptual frameworks. In Part IV, I turn to the question of race and investment law. This Review Essay suggests that race should not be neglected in our analysis of the past, present, and, most importantly, the future of investment law—a core theme that both books under review does not engage with. Part V briefly concludes.

Arnett, C. "Black Lives Monitored." *UCLA Law Review*, Forthcoming 2023. *University of Maryland Legal Studies Research Paper*, no. 2023-11.

The police killing of George Floyd added fuel to the simmering flames of racial injustice in America following a string of similarly violent executions during a global pandemic that disproportionately ravaged the health and economic security of Black families and communities. The confluence of these painful realities exposed deep vulnerabilities and renewed a reckoning with the long unfulfilled promise of racial equality, inspiring large-scale protests around the country and across the globe. As with prior movements for racial justice, from slavery abolition to the civil rights movement's demand to end Jim Crow, protests have been met with extreme force, either state-led or state-sanctioned. Historically, and currently, these aggressive responses to frustrate and limit the effectiveness of racial justice movements have been aided by targeted surveillance strategies. Most recently, these surveillance tactics have grown in sophistication and capability, as seen with state and national police forces using an array of advancing technologies that capture biometric data, deploy artificial intelligence (A.I.), and visually track and record personal movements over wide distances and time periods. The ability to

surveil and disrupt protests has profound implications for political expression, democratic governance, and the possibilities of achieving racial justice.

This Article argues that while the Fourth Amendment is presumed to check the state's power to surveil, it often facilitates the very practices it should limit. Fourth Amendment jurisprudence on surveillance and the legal norms that have developed around police monitoring present significant barriers to challenges of the contemporary surveillance technologies utilized against Black Lives Matter movements. Given the limits of traditional privacy frameworks to account for the historical realities and threats of racialized surveillance practices, the Article promotes a race justice lens as necessary in understanding and navigating police surveillance technology discourse and fashioning appropriate responses. It concludes that local and federal advocacy, a reckoning with constitutional interpretation, and legislative action may be necessary to counter police power to surveil, including concerted efforts to meet the demands of the movement. Those demands call for shifting the dominant narrative on what safety entails and requires and limiting the reach of and reliance on law enforcement.

Bearer-Friend, J. "Race-Based Tax Weapons." *U.C. Irvine Law Review* 14, Forthcoming 2023.

In the United States, the term "poll tax" often refers to a very specific tactic of white supremacy: the use of tax policy to prevent voting by Black citizens. While "poll tax" is an accurate descriptor of these taxes, poll taxes have a much more expansive history within the twentieth century. Following in the rich tradition of comparative tax scholarship that looks at multiple jurisdictions to arrive at broader tax policy conclusions, this Article examines four distinct poll taxes applied by Anglophone governments in the twentieth century to illustrate a broad phenomenon I call "tax weapons"—the use of tax policy to harm political adversaries.

The primary contribution of this comparative research on twentieth century poll taxes is to further demonstrate how universal language in tax statutes can be used to effectively target political rivals, with a focus on the targeting of taxpayers by race, ethnicity, or ancestry. By contrasting two poll taxes where race, ethnicity, or ancestry are explicitly mentioned in the law with two poll taxes where there is no mention of race, ethnicity, or ancestry, I uncover that the poll taxes that do not mention specific targets can be equally effective—if not more effective—at achieving discriminatory goals than poll taxes that specify their targets. These insights about the use of nominally universal tax policies for the purpose of targeting political rivals informs the analysis of tax policy beyond just poll taxes.

Bernini A. et al. "Black Empowerment and White Mobilization: The Effects of the Voting Rights Act." *NBER Working Paper,* no. w31425 (2023).

The 1965 Voting Rights Act (VRA) paved the road to Black empowerment. How did southern whites respond? Leveraging newly digitized data on county-level voter registration rates by race between 1956 and 1980, and exploiting pre-determined variation in exposure to the federal intervention, we document that the VRA increases both Black and white political participation. Consistent with the VRA triggering counter-mobilization, the surge in white registrations is concentrated where Black political empowerment is more tangible and salient due to the election of African Americans in county commissions. Additional analysis suggests that the VRA has long-lasting negative effects on whites' racial attitudes.

Conklin, M. "Boycotts, Race, Rankings, and Howard Law School's Peculiar Position." *University of New Hampshire Law Review* 22, (2023).

Novel research was conducted in 2020 to measure disparities between the U.S. News & World Report overall rankings and the peer rankings of law schools. The research uncovered a stark outlier—Howard University School of Law—whose peer rank was consistently twenty to forty spots higher than its overall rank. Another article was published in 2023 using updated rankings data from 2022 and 2023. This update found that the disparity has been growing in severity in recent years. The present Article updates the research with the most recent 2024 data released in May 2023. With Howard's overall ranking of 125 and peer ranking of forty-nine, the trend of increasingly disparate overall–peer rankings continues.

Because the overall rankings are largely based on objective factors, such as Law School Admission Test (LSAT) scores, bar passage rates, and after-graduation employment, and the peer ranking is purely subjective, the overall–peer deviation provides valuable insight into potential bias in how law schools are viewed. Howard's increasingly pronounced disparity between how it is viewed by its peers and its objective performance measures strengthens the original explanation in the 2020 paper: As racial salience increases in society, so does the unique standing of Howard—the most prestigious historically Black college or university (HBCU) law school. This Article investigates potential non-racial explanations that could result in peer rankings that are seventy-six spots above the overall rankings. These include an exceptional law review, use of promotional materials, location, political ideology, notable alumni, professor quality, unwillingness to game the system, and statistical noise. All of these non-racial explanations come up short.

This research provides a valuable framework for examining a confluence of events at this critical juncture in time. The upcoming Supreme Court decisions on affirmative action in higher education will likely change how race is viewed in admissions. The American Bar Association's (ABA's) removal of the LSAT requirement sparked debate about race and standardized testing. The recent explosion of artificial intelligence technologies calls into question the future of legal education and the legal profession. The expected law school enrollment cliff of 2025 will profoundly affect law schools. The Varsity Blues admissions scandal calls into question the ability of the well connected to game the system. The new rankings methodology drastically decreased the significance of grade point average (GPA) and LSAT scores as well as the significance of the peer score as a contributor to the overall score. The decision of top law schools to boycott the rankings immediately after Supreme Court oral arguments in the affirmative action cases illuminates how race was likely a driver behind the decision. Additionally, there is an overall increase in racial salience in society and a movement toward replacing more objective measures with more diversity-focused measures, such as environmental, social, and corporate governance (ESG) investing. Consequently, this Article is also highly informative regarding larger questions, such as what role law school rankings should play, how law schools alter their behavior based on the rankings, and the role of race in legal education and the practice of law.

Hicks, C. D. "Without Reservation: Ensuring Uniform Treatment in Bankruptcy While Keeping in Mind the Interests of Native American Individuals and Tribes." *Fordham Journal of Corporate and Financial Law 28*, no. 2 (2023).

The Bankruptcy Code ("Code") exists as a mechanism for good faith debtors to discharge debts and seek a "fresh start" in life and finance. Importantly, the Code is intended to apply without regard to race or location, and it usually does. 11 U.S.C. § 106(a) ensures that not only are all debtors treated uniformly, but that all creditors, including governmental creditors which may otherwise enjoy immunity from suit, are equally subject to the jurisdiction of Bankruptcy courts and bound to the provisions of the Code.

However, a recent circuit split has demonstrated one niche yet significant instance in which a debtor may not receive the same treatment as their counterparts, based solely on where they live and with whom they transact business. While § 106 contains an express waiver of sovereign immunity of all "governmental units," several courts have held that its language does not feature the specificity necessary to incorporate Native American tribal entities within this waiver. Under this interpretation, tribal entities are not bound by the Code and can effectively disregard debtor protections contained therein. As a result, debtors residing on or near tribal lands who frequently deal with financial institutions owned or operated by a tribal government may not receive the same treatment of their debts as other debtors.

Diaz, A. "Online Racialization and the Myth of Colorblind Content Policy." Forthcoming, *Boston University Law Review* 103, (2023).

This Article presents a critical analysis of social media content moderation, arguing that colorblind policies obscure and legitimize systems of white supremacy. Through facially neutral content policies, social media platforms conceal deliberate choices that align racial benefits and burdens with corporate interests. These choices connect the profitability of racism, the regulatory benefit of protecting politicians who trade in bigotry, and the racial biases that inform how platforms conceptualize the harms of online speech. The resulting content policies reinforce a hierarchical structure that upholds the dominant social, political, and economic advantages attendant to whiteness.

As the primary document governing millions of daily decisions regarding online speech, content policy has an unprecedented ability to shape global norms. Although social media companies purport to treat all groups equally, colorblind content policy protects white bigotry while suppressing anti-racist and anti-colonial resistance. Dominant racial groups are granted extensive latitude of expression, encompassing everything from racial dog-whistles to explicitly racist harassment campaigns. Under the guise of humor or political debate, social media companies foster white vigilantism and authoritarian incitement. In contrast, communities of color are policed as dangerous, violent, and uncivilized. Colorblind hate speech rules restrict the ability of marginalized groups to explicitly denounce white racism, while racialized enforcement of violent extremism policy broadly suppresses political debate and sacrifices everything from satire to journalism in the name of public safety.

Understanding the asymmetry inherent in content moderation requires an engagement with the history and logics of racism. The illusion of colorblind content policy reinforces racial hierarchies by making them appear natural and inevitable. This article challenges the discriminatory structure of colorblind content policy and advocates for an alternate approach that incorporates the race-conscious moderation necessary to foster full participation in modern society.

Hadah, H. "The Impact of Hispanic Last Names and Identity on Labor Market Outcomes." *DISCRIMINATION, LAW & JUSTICE Ejournal*, Vol. 24, No. 259: Sep 13, 2023

In this paper, I study discrimination against Hispanics in the labor market. I compare the children of inter-ethnic marriages to study the impact of having a Hispanic last name. While males born to Hispanic father-White mothers earn 6 percentage points less than those born to White father-Hispanic mothers, the gap could be completely explained by educational differences. I also study the effect of identifying as Hispanic on earnings. I find that men with a Spanish-sounding last name who identify as Hispanic earn significantly less than those who do not identify as Hispanic, but the gap could also be explained by educational differences.

Joshi, Y. "Racial Time." *University of Chicago Law Review*, Vol. 90, 2023.

Racial time describes how inequality shapes people's experiences and perceptions of time. This Article reviews the multidisciplinary literature on racial time and then demonstrates how Black activists have made claims about time that challenge prevailing norms. While white majorities often view racial justice measures as both too late and too soon, too fast and too long-lasting, Black activists remind us that justice measures are never "well timed" within hegemonic understandings of time. This Article ultimately argues that United States law embodies dominant interests in time. By inscribing dominant experiences and expectations of time into law, the Supreme Court enforces unrealistic timelines for racial remedies and 'neutral' time standards that disproportionately burden subordinated groups. Because the legal enactment of dominant time perpetuates structural inequalities, this Article urges United States legal actors to consider and incorporate subordinated perspectives on time. The Article concludes with a series of recommendations for centering these perspectives and rendering them intelligible and actionable in law.

Kronk Warner, E. A., and Lillquist, J. "Laboratories of the Future: Tribes and Rights of Nature." *University of Utah College of Law Research Paper,* no. 551 (2023).

From global challenges such as climate change and mass extinction, to local challenges such as toxic spills and undrinkable water, environmental degradation and the impairment of Earth systems are well documented. Yet, despite this reality, the U.S. federal government has done little in the last thirty years to provide a comprehensive solution to these profound environmental challenges; likewise, significant state action is lacking. In this vacuum, environmental legal advocates are looking for innovative environmental solutions to these challenges. Against this backdrop, rights of nature have increasingly gained traction as a possible legal tool to help protect the natural environment from the harms perpetrated by humans. Rights of nature laws generally have two elements: (1) legal personhood for natural entities, such that nature has standing in court, and (2) substantive rights for natural entities. This Article explores the scope and origins of rights of nature and examines how they are being implemented both within the United States and abroad.

Ochs, S. L. "Confronting Legacies of Indigenous Injustice: Lessons from Sweden." *Seton Hall Law Review*, Vol. 54, Forthcoming.

The past decade has brought global efforts by settler colonial states to provide healing and justice for past and ongoing harms against indigenous communities. Many of these efforts have manifested in the creation of truth commissions, nonjudicial entities which seek to establish a reliable historical record of harm; promote reconciliation; and foster healing by providing harmed parties the opportunities to share their stories and—in some cases—to confront their perpetrators. To date, these commissions have been established by various settler colonial states, including Canada and Greenland. Most recently, however, Scandinavian countries have turned to truth commissions to provide redress for past harms against their indigenous peoples, the Sami. In fact, within the last few years, Norway, Finland, and Sweden have all created independent truth commissions to investigate their nations' respective systemic discrimination against the Sami People and provide forms of healing and pathways to reconciliation.

This paper specifically examines the creation and operation to date of Sweden's Truth Commission on the Violations of the Sami People by the Swedish State. Relying on materials issued by the Swedish Truth Commission as well as interviews conducted with representatives of the Truth Commission, this paper analyzes

the events that led to the creation of the Truth Commission, its mandate and expected goals, and the type of work it intends to engage in to facilitate truth and healing among the Swedish Sami People.

Currently, there remains legislation pending in both houses of U.S. Congress for the creation of a truth and healing commission to address the use of Indian Boarding Schools in the United States, at which thousands of Native American children were removed from their families, forcibly assimilated into American culture, and often sexually, mentally, and physically abused. Utilizing diffusion theory, this paper seeks to draw lessons from the Swedish Truth Commission that the U.S. may learn from in creating its own national truth commission to address past harms against Native Americans.

Spindelman, M. "The New Intersectional and Anti-Racist LGBTQIA Politics: Some Thoughts on the Path Ahead." *Ohio State Legal Studies Research Paper,* no. 773 (2023).

This essay, originally presented as a talk at the Washington University School of Law in St. Louis on April 30, 2023, as part of the Midwest LGBTQ+ Rights Conference and the Washington University Public Interest Law & Policy Speakers Series, takes up the new intersectional and anti-racist LGBTQIA+ politics. It offers some reflections on those politics, their meanings, and their possible trajectories in the days ahead in light of recent and soon-to-be-released Supreme Court decisions.

Varuhas, J. N. E. "The Principles of Legality in Aotearoa New Zealand." *Public Law Review* (forthcoming), (2023).

The principle of legality (POL) may have had a slow start in New Zealand. But a trilogy of Supreme Court decisions in 2021 – D v Police, Fitzgerald v R and Trans-Tasman Resources v Taranaki-Whanganui Conservation Board – as well as a significant case law generated by the Covid-19 pandemic, have ensured the principle's meteoric rise. Interpretive presumptions protective of basic norms are emerging as a central and perhaps defining feature of contemporary public law in Aotearoa, and are destined to be at the heart of future legal development.It follows that the POL should be a key focus for all public lawyers. The principle is typically taken to mean that if Parliament wishes to infringe basic legal norms it must do so through express statutory language or by necessary implication.This article unpacks the legality jurisprudence. First, it analyses the 'triggers' for the POL. That is, the norms which enliven the interpretive principle. While the POL is traditionally associated with protection of common law rights, the triggers have expanded significantly over time. The article examines four types of trigger: common law rights; principles of the Treaty of Waitangi (and tikanga/Māori customary law); internati*onal law; and statutory norms, specifically rights under the New Zealand Bill of Rights Act 1990.*

Religion

Hasan, N. "An Analysis of Bangladesh's Progress Toward Establishing Gender-Neutral and Pro-Women Islamic Family Law." *Social Science Research Network,* (2023).

The existing family laws in Bangladesh have many provisions available regarding issues related to Muslim matters. However, the state isn't updating those provisions from time to time. That is why many anomalies and ambiguities exist in Bangladesh's statutory laws. Most of the provisions about family matters in the statutory

law are discriminatory and deprive women of their rights. This study discussed those discriminatory laws by comparing them with the statutory laws of other countries. This study found that most of the existing provisions of Bangladesh aren't gender-friendly. This study also found that many crucial Muslim family issues have no existence in the statutory laws of Bangladesh. Modern countries are developing their laws on a timely basis. This study suggests that Bangladesh needs to take inspiration from those countries. This study also recommends that sufficient reformation in the Muslim family law of Bangladesh is essential for protecting the rights of everyone.

Parkinson, P. "Gender Identity Discrimination and Religious Freedom." *Journal of Law and Religion 38*, no. 1 (2023).

Is there a legitimate basis for religious exemptions from laws that prohibit gender identity discrimination on the basis of people's beliefs? The author argues that much depends upon how gender dysphoria is understood. If it is seen as a problem requiring medical diagnosis and treatment, then arguably there is no religious basis for discrimination, except in a few situations where being a biological male or female is theologically essential to a particular role. Transgender identification, understood as a medical issue, fits within a belief system that God created two sexes of human beings, male and female. Within that belief system one can make room for an understanding that there are those who experience disorders of sex development and those who have such a profound sense of being born in the wrong body that they undertake steps toward medical transition to align their bodies, as far as possible, with the opposite sex. However, recent reinterpretations of what it means to be transgender involve an assertion that it should not be seen as a medical issue, that affirmation of a person's self-declared gender identity, with or without having hormonal treatment or surgery, is a matter of human rights and that the law should recognize that people may have a gender that, however described, is nonbinary. These views rely on certain beliefs and positions that have a very weak basis in science. They challenge religious beliefs, which accord with mainstream scientific understanding, that human beings are intrinsically a sexually dimorphic species. People of faith need the freedom to reject beliefs that are incompatible with their worldviews. That does not mean that ill-treatment of someone on the basis of their gender identity can ever be justified; but it does support a religious exemption from a legal obligation to accept someone else's self-declared gender identity. It is one thing to ask me to respect your beliefs about yourself. It is another to ask me to act toward you as if I share your beliefs.

Watemberg Izraeli, S. "Religious Women's Paradox of Multicultural Vulnerability: Liberal-Democratic Mechanisms' Failures and the Question of Membership." *Social Science Research Network, (2023).*

Multiculturalism, legal pluralism, laws and rights of religious and cultural freedom – for half a century literature and legislation have contended profusely with their repercussions for women. For women members of the community, the very acquisition of collective rights by their communities frequently entails the forfeiting of individual civil rights – the "paradox of multicultural vulnerability". The intersectionality of their communal membership, their womanhood, and the legal system to which they are subject, manifests in combined disadvantages, oppressions, and marginalisation as vulnerable members within the community. Liberal-democratic solutions to the paradox, however, continue to fail. The deference to human rights, to the values of autonomy, equality, and freedom, the adherence to international or transnational human rights' and gender equality treaties, have not yet solved women's paradox of multicultural vulnerability, at least not substantially. What is the obstacle to remediation that causes continuous contention between liberal-democratic approaches of multiculturalism and liberal-democratic principles of the human rights to those women members of the

religious or cultural communities? This paper aims to pave a significant step forward in understanding and rectifying the complexity of the paradox of multicultural vulnerability by identifying and offering a typology of the failures of liberal-democratic mechanisms attempted hitherto. Doing so will elucidate the underlying elements that interact together to give rise to the paradox. Underlying the typology, this paper will exhibit the etic standpoint that current liberal-democratic legal and academic literature maintain in their approach to the paradox of multicultural vulnerability. Subsequently, this paper suggests that the chronic failure of liberal-democratic States to remedy the paradox of multicultural vulnerability lies in the incongruity between the problem and the solutions attempted. Specifically, that the contentions of literature and legislation with the paradox of multicultural vulnerability fail to touch upon the three-tiered root of the paradox – pertaining to that triadic relationship of law-community-woman: 1. the lack of recognition of the role of liberal-democratic laws in producing the paradox; 2. the religious tenet of legitimacy that underscores the paradox and is constructed through the socio-legal interaction of the emic definition of the religious community and the etic legal one; 3. the misidentification of religious women's normative claims as external to the religion rather than deriving from within their religiosity. This paper offers a new understanding of the paradox of multicultural vulnerability for implementation in both research and legislation, specifically regarding religious women. Finally, this paper will engage with the conceptualisations of religious membership interwoven in each root, and their legal implications.

Reproductive Rights

Bhaghamma, G. "Addressing Menstrual Stigma: The Case for Implementing Menstrual Leave as a Legal Provision in India." *Indian Journal of Law and Legal Research 5,* no. 2 (2023).

This paper explores the need for a legal provision for menstrual leave in India to address the stigma surrounding menstruation and promote gender equality in the workplace and society. Menstrual leave refers to a policy that allows women to take time off from work or school during their menstrual cycles. While some companies in India have voluntarily introduced menstrual leave policies, there is no legal provision for it yet. The paper argues that a legal provision for menstrual leave is necessary to ensure that women are not discriminated against in the workplace and have the right to take time off during their menstrual cycles. However, the paper also acknowledges concerns about the implementation of menstrual leave policies and suggests that the policy should be carefully crafted, with proper guidelines for its implementation, to address concerns about its misuse and promote gender neutrality. Ultimately, the paper concludes that implementing a legal provision for menstrual leave in India is crucial for addressing menstrual stigma and promoting gender equality in the workplace and society.

Gold Waldman, E. and Bridget J. C. "Menstruation in a Post- Dobbs World." *New York University Law Review 98,* no. 191 (2023).

In this Essay, we re-examine our 2022 book, Menstruation Matters: Challenging the Law's Silence on Periods, through multiple related lenses, including the human rights, sustainability, and workplace issues emphasized by our three reviewers; the COVID-19 pandemic; and the Supreme Court's decision in Dobbs v. Jackson Women's Health Organization. All of these perspectives converge on the inherent dignity and autonomy interests in being able to manage one's own body. Menstruation and related conditions like breastfeeding,

pregnancy, and menopause should not be sources of shame or stigma. Nor should they be vectors of formal control by the government or de facto exclusion from school, work, or any aspect of public life. Yet the Supreme Court's overturning of Roe v. Wade means that reproduction-associated bodily processes likely will be the focus of legal battles for years to come. As we continue to emphasize the many ways that menstruation matters in life and law, we strive for a legal future that recognizes the full humanity of all people and safeguards our equal rights.

Kovacs, R. "Does Free Maternity Care Improve Uptake and Save Lives? Quasi-Experimental Evidence from Kenya." *Development Economics: Women, Gender, & Human Development Ejournal*, Vol. 12, No. 48: Aug 10, 2023.

There is an ongoing debate about how to reduce maternal and neonatal mortality in low and middle-income countries (LMICs). As maternity care is not free in many LMICS, many assume that user-fees deter healthcare seeking and are therefore partially responsible for high mortality rates. This paper provides evidence on the causal effect of a national user-fee removal programme in Kenya on healthcare seeking and mortality, using a difference-in-differences design that exploits variation in treatment intensity across local communities. Results indicate a small increase in uptake of antenatal care but no average effects on facility delivery, mortality or the quality of healthcare. I examine several potential mechanisms and find heterogeneous treatment effects based on physical accessibility of care as well as community-level preferences on household decision making.

Legarde, L. M. "Sex Industry: Analysis of Sex Work and Sex Workers in Zamboanga City, Philippines." *DEVELOPMENT ECONOMICS: WOMEN, GENDER, & HUMAN DEVELOPMENT Ejournal*, Vol. 12, No. 48: Aug 10, 2023.

This research paper investigates the sex industry in Zamboanga City, Philippines, with a particular focus on the experiences and socio-economic conditions of sex workers. The findings reveal significant insights into the dynamics of the sex industry in Zamboanga City. The findings show that a majority of sex workers are female with a notable minority being transgender individuals and male. The study highlights the prevalence of early entry into the industry, with respondents reporting involvement before the age of 18, underscoring the urgency of addressing the issue of underage participation. Furthermore, the research identifies various challenges faced by sex workers, including inconsistent access to healthcare, low earnings and instances of violence or abuse. The data also reveal the influence of socioeconomic factors citing economic necessity as their primary reason for engaging in sex work. The study offers valuable empirical data to inform evidence-based policymaking, aiming to improve the welfare and working conditions of sex workers in Zamboanga City. By shedding light on the realities and needs of this marginalized population, policymakers can develop targeted interventions and support mechanisms to enhance their safety, health, and socio-economic outcomes.

Ramos, S. et al. "Step by Step in Argentina: Putting Abortion Rights Into Practice." *International Journal of Women's Health*, (2023).

In December of 2020, the Argentine Congress legalized abortion through 14 weeks, vastly increasing access to abortion care in the country. The law's passage followed years of advocacy for abortion rights in Argentina - including mass public and civil society mobilization, vocal support from an established pool of abortion providers who offered abortion services under specific legal exceptions prior to the new law, and

the growth of community groups such as the Socorristas en Red who provide support for people to self-manage abortions. Aided by ample political will, the number of health facilities offering services increased substantially after the law was passed, and the public visibility around the law has helped assure people seeking abortion that it is their right. Proyecto mirar is an initiative focused on both gathering and using qualitative and quantitative data to inform stakeholders about the progress and obstacles of the law's implementation. In this review, we present an overall summary of the first two years of implementation of the abortion law in Argentina based on proyecto mirar data and contextualized through the historical processes that have contributed to the law's passage and application. While we see increases in abortion services and improved public perception around abortion rights, inequities in access and quality of care persist throughout the country. Specifically, providers in some regions are well trained, while others create obstacles to access, and in some regions health services provide high quality abortion care whereas others provide substandard care. To be sure, the implementation of public policies does not happen overnight; it requires government support and backing to tackle obstacles and solve implementation problems. Our findings suggest that when new abortion laws are passed, they must be supported by civil society and government leaders to ensure that associated policies are well crafted and monitored to ensure successful implementation.

Sharma, D. and Kewaliya, V. "Forced Motherhood v. Reproductive Freedom: A Comparative Study of US and India." *Reproductive Justice, Law & Policy Ejournal*, Vol. 14, No. 32: Aug 10, 2023.

Forced pregnancy leads to forced motherhood and it impacts not only the physical health of a woman but also mental and psychological health. India claims to be a pro-women rights State but if failed to accept 'consent' of women in its true spirit. Reproductive freedom is not possible without knowing the deeply embedded patriarchy. Principle of equality and principle of non-discrimination are foreign to a woman in India in aspect of free consent and reproductive choices. Undoubtedly, US judgement of Roe v. Wade is a direct attack on women's bodily integrity and reproductive freedom, however, this paper strives to analyse the condition of women in India despite having liberal abortion laws. Reproductive freedom without right of 'free consent', is continuously posing a threat where women could be forced to remain pregnant against her will, losing control over their own bodies and future. The burden falls on the woman who is forced to remain 'pregnant', without having a choice of getting rid of it despite having fair laws in an unfair social setting. This paper also emphasises on comparative study of 'reproductive freedom" in India and US and makes a move to adopt holistic approach to address and ensure fair play for each woman of the world in terms of reproductive health.

Tang, A. "Lessons From Lawrence: How "History" Gave Us Dobbs—And How History Can Help Overrule It." *Yale L.J. Forum* 133, Forthcoming (2023).

Dobbs v. Jackson Women's Health Organization is not the first time the Supreme Court has relied on dubious history to deny a constitutional right of profound importance. When the Court rejected what it described as the right of "homosexuals to engage in acts of consensual sodomy" in Bowers v. Hardwick, it did so based on disputed historical claims about criminal sodomy laws in early America. Indeed, when the Court later overruled Bowers in Lawrence v. Texas, it openly confessed that Bowers's "historical premises are not without doubt and, at the very least, are overstated."

This Essay explores three important lessons that reproductive justice advocates can learn from how Lawrence used history to discredit Bowers. First, Lawrence shows that Dobbs is vulnerable to

overruling because it, like Bowers, rests on faulty historical premises, including (but hardly limited to) Dobbs's self-proclaimed "most important historical fact" that 28 out of 37 states banned abortion throughout pregnancy as of the Fourteenth Amendment's enactment. Second, Lawrence suggests that these historical errors should undermine any claim Dobbs might make to stare decisis treatment. Finally, Lawrence reveals history's limited utility in modern constitutional disputes. The problem with Dobbs's dubious history, Lawrence teaches, is not that it represents the misapplication of a tractable test. The problem is that the history-and-tradition test Dobbs purports to apply is often deeply underdeterminate.

Whelan, A. "Aggravating Inequalities: State Regulation of Abortion and Contraception." *Harvard Journal of Law and Gender 46,* (2023).

Each year in the United States, pervasive inequities in health-care access and health outcomes contribute to tens of thousands of excess deaths among communities of color and other historically marginalized and vulnerable populations. Tragically, even that number may be a conservative estimate. These inequities transpire from structural barriers rooted deeply in racism, sexism, ableism, heterosexism, and other forms of discrimination. Health-care federalism in the United States--the division of power between the federal and state governments in the regulation of health care--although at times beneficial, too frequently exacerbates health disparities. This Article takes up one aspect of health-care federalism--state regulation of pharmaceutical products ("pharmaceutical federalism")--and exposes how state bans and restrictions on pharmaceuticals approved by the U.S. Food and Drug Administration (FDA) contribute to disparities in health-care access and outcomes. Specifically, this Article focuses on two pharmaceuticals currently in the crosshairs of health-care federalism and in need of urgent attention: medication abortion and contraceptives.

Notwithstanding the states' long-standing role in regulating health care and the practice of medicine, the changing nature of the provision of health care--which increasingly crosses state or even international lines--raises serious and pressing questions about the logic of continuing to show strong deference to such state authority. This Article interrogates pharmaceutical federalism and considers whether federal law can, or should, preempt state bans and restrictions on FDA-approved pharmaceuticals. This question is now top of mind for lawyers, scholars, policymakers, and the public in the wake of the U.S. Supreme Court's ruling in Dobbs v. Jackson Women's Health Organization. Its urgency cannot be understated. This Article exposes how current law, policy, and judicial precedent leave the answer to this question uncertain. Absent additional clarity, the significant harms of health-care federalism will continue unabated as states push back against federal authority and test the scope of their powers by restricting or banning certain FDA-approved pharmaceuticals. This Article proposes a legislative fix, along with other regulatory and policy changes, to combat the negative consequences of state pharmaceutical bans and restrictions.

[*] Widiss, D. A. "Time Off Work For Menstruation: A Good Idea?" *New York University Law 98,* Forthcoming (2023).

In February 2023, Spain became the first European country to guarantee "menstrual leave" for workers, joining several countries, mostly in East Asia, that have long done so. It has also become increasingly common for companies to offer paid time off to menstruators as a discretionary benefit. Reports on these developments are almost always accompanied by criticism from self-identified feminists voicing concern that the policies will spur discrimination against women or reinforce stereotypes about menstruators as incapable workers. This echoes earlier debates over maternity leave. The growing menstrual justice movement has exposed myriad

ways in which workplaces can be inhospitable to menstruators. This Essay suggests, however, that there are alternatives to leave that could address many of these problems without triggering the same concerns of backlash. These include effective enforcement of existing laws and regulations relating to restroom access, break time, and workplace accommodations for various health needs. Additionally, employers can provide free menstrual products in workplace restrooms to allows workers to handle periods with dignity--even when they start unexpectedly--and help destigmatize menstruation. Even if these practices become routine, some menstruators might need to miss work when experiencing severe menstrual symptoms. The Essay suggests that rather than seeking menstrual-specific leave, advocates might join forces with the burgeoning campaign to guarantee adequate paid sick days for all workers. Menstruation is not an illness, but most such laws are written broadly enough to meet menstruators' needs. This universal approach, designed to support a broader swath of workers, would probably be easier to pass politically, and it would be far less likely to result in workplace discrimination against menstruators.

Yamin, A. E., Ramon Michel A. "Using Rights to Deepen Democracy: Making Sense of the Road to Legal Abortion in Argentina." *Fordham International Law Journa*l 46, (2023).

This Article situates the 2020 passage of a law legalizing abortion as an inflection point for Argentine democracy and a case study of how rights concepts can be deployed to advance reproductive justice. First, beginning with the transition to democracy, this study traces shifts in opportunity structures including political and institutional changes; key judicial decisions as well as legal reforms; and the construction of relations among traditional feminist organizations, health professionals, and new actors including key politicians and other decision-makers. Second, the Article focuses specifically on the last fifteen years of legal and social mobilization, the evolving networks of actors engaged in advancing abortion rights, and how the issue became embedded in public debates within and beyond formal institutions of the state. The third stage describes the process of passing legislation in the Argentine Congress and the social decriminalization that was essential for the passage and implementation of the law. Finally, the Article provides a brief overview of trends in Argentina in the first year after the legislation went into effect. The Argentine case illustrates the constructivist and recursive nature of using rights to advance abortion access, whereby the framework of universal human rights in international law interacts dialectically with the interpretations and further adaptation at the national level.

Sex and Gender

De Silva de Alwis, R. "The Evolving Concept of Gender and Intersectional Stereotypes in International Norm Creation: Directions for a New CEDAW General Recommendation." *University of Pennsylvania Law School, Public Law Research Paper,* no. 23-21 (2023).

A mapping of recent Concluding Observations issued to States parties by the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), the Committee on the Rights of the Child (CRC), the Committee on the Rights of Persons with Disabilities (CRPD), and the Committee on the Elimination of Racial Discrimination (CERD) provides an analysis of the evolving human right standard by which to examine gender and intersectional stereotypes. The mapping exercise focused on cultural practices and gender stereotypes in the Concluding Observations reveals the CEDAW Committee is more likely than any other above-mentioned treaty body to discuss stereotypes. This provides us with a textual understanding of how stereotypes, culture

and traditional practices often overlap and intersect. While gender stereotypes have replaced more overt forms of gender discrimination, these subtle stereotypes constitute different challenges as they are less visible to the untrained eye. The second part of the paper examines how a new generation of stereotypes are being baked into Artificial Intelligence (AI) through AI training data. Despite the strides in AI innovation, the dangers of potential gender bias are real. As much as these new technologies have the potential for great good and can advance medicine, science, health care, food security and other forms of human endeavor, they also have great potential for harm and pose risks to human rights. The CEDAW's new General Recommendation (GR) 40 and the GR 41 (in the pipeline) can create important new normative frameworks that propose a human right-based approach to mitigate the emerging gender stereotypes of new technologies.

Grossman, Joanna L. "The Winding Path Toward Gender Equality and the Advocates and Scholars Who Forged It." *Yale Journal of Law and Feminism 34,* no. 14 (2023).

At its broadest, "feminist legal thought" describes the effort across generations to secure equality for women through law. The ideas that have emerged from this work can be loosely typed as "equality theories," and the statutes, constitutional interpretations, and doctrines they inform can be tied together under the heading of "gender law." Three features of gender law are noteworthy. First, while other areas of study might not be premised on any underlying commitments—for example, a labor law scholar might be passionately for or against unions— the term "feminist legal theory" implies a commitment to women's equality. Second, the founders of the field had to persuade legal and other actors of the underlying premise—that women are entitled to equality—before helping construct the law's response to existing inequality. Most areas of law are built on a series of unstated and largely uncontroversial premises: that the law should impose liability for conduct that injures others. But gender law only exists if legal actors believe that gender inequality is wrong—and for most of history that was not a popular view. Third, by its very nature, gender law combines theory and practice. The theory provides the justification necessary to persuade courts, lawmakers, or institutions to adopt rules and practices that will lead to greater equality for women; the practice is what (potentially) delivers on the theory of equality. The praxis is the field. This essay will explore the development of feminist legal theory, showcasing the multi-faceted ability of feminist legal theorists to identify forms of disadvantage, theorize about their harm, construct the proper responses, and persuade decisionmakers to act.

Johnson, Olatunde C. and Forman Rabinovici, Aliza. "Political Equality, Gender, and Democratic Legitimation in Dobbs." *Harvard Journal of Law and Gender 46,* (2023).

This Article examines the Supreme Court's ruling in Dobbs v. Jackson Women's Health, showing how the Court deploys new arguments about women's political equality—alongside longstanding arguments about federalism and judicial minimalism—to legitimate the overruling of Roe v. Wade. In contending that abortion rights are better determined by legislatures, the Dobbs Court advances a thin conceptual account of democracy and political equality that ignores a range of anti-democratic features of the political process that shape abortion policy—such as partisan politics and gerrymandering—as well the absence of women in the legislative process. Key to the Court's ruling is its claim that women are "not without" electoral and political power, citing data on women's equal or higher rates of voting in Mississippi. The Court's conceptual account of political equality centers on voting while ignoring other modes of political participation as well as structural inequalities and barriers to women's equal participation as candidates and legislators. When considering political candidacy and representation as measures of participation, a significant dimension of inequality between men and women emerges. Our investigation of the full dimensions of political inequality and the effects of anti-democratic

distortions has important implications for those who wish to bring equal protection and other legal challenges to reproductive restrictions at the state level, and for ensuring inclusive and legitimate policymaking on reproductive rights and beyond. As scholars and commentators debate the proper role of the Supreme Court in democracy and argue for shifting rights determination to the legislative arena, an examination of the structure of the political process and whether legislatures are inclusive is crucial.

Jouet, M. "A History of Post-Roe America and Canada: From Intertwined Abortion Battles to American Exceptionalism." Michigan Journal of Gender & Law (forthcoming), (2023).

This Article explores why abortion is being recriminalized in the United States in sharp contrast to the historical evolution of reproductive rights. Its thesis is that abortion exemplifies American exceptionalism in the original sense of the phrase that America is an "exception," especially within the Western world. Yet the Article demonstrates that American exceptionalism should not be misunderstood as historical determinism or cultural essentialism. By the early 1970s, America was converging with peer Western democracies in liberalizing abortion. This process of convergence was ultimately impeded by the growing polarization of modern America. The United States' persistent battles over abortion became increasingly peculiar as the rest of the Western world came to widely accept or tolerate a woman's right to terminate a pregnancy.

Hajra, F. H., Rustemi, A. "Enhancing Gender Public Participation in Newly Established Democracies: Exploring the Influence of Social Norms on Women's Proactivity in Kosovo and North Macedonia." *WOMEN, GENDER & THE LAW Ejournal*, Vol. 18, No. 164: Aug 2, 2023.

Contemporary studies of politics highlight the significance of public activism and participation in governance. These mechanisms and the formulation of public policies foster interaction between institutions and society, promoting democracy, transparency, cohesion, and inclusiveness. However, newly formed democracies often face challenges in ensuring inclusive participation forums and structuring effective gender inclusion policies. Consequently, women's participation in politics and the public sphere remains low, with the gender role being frequently overlooked. This article delves into the impact of gender public participation in newly established democracies, specifically examining how social norms influence the proactivity of women in Kosovo and North Macedonia. It explores the measures implemented by these states to ensure proactive women's participation. It analyzes the contribution of women's civic activism through civil society in building democracies and challenging traditional social norms. Given that Kosovo and North Macedonia have established legal frameworks based on European Union principles, they exhibit similarities in terms of gender public participation and state political systems.

The conclusions drawn in this article are based on the analysis of international reports, including the Transformation Index BTI, Country Reports, and Varieties of Democracies - Public Variables on Public Participation. By shedding light on the interplay between gender public participation, social norms, and the development of newly established democracies, this research contributes to understanding effective strategies for enhancing women's engagement and promoting gender equality in political and public realms.

Lo, M. "Gender Equality and the Sustainable Development Goals: Discursive Practices in Uncertain Times." In: Rebecca J. Cook, ed., Frontiers of Gender Equality: Transnational Legal Perspectives, University of Pennsylvania Press, 2023.

This chapter analyzes the Sustainable Development Goal 5 on gender equality (SDG5) within the 2030 Sustainable Development Agenda, examining its discourses, macro politics, frictions, synergies and promises for transformation. Critical to this analysis is an unpacking of the formative genealogy of the global agenda, its institutional apparatus, financing and its modality of implementation in varied African geo-historical contexts. It surfaces the challenges posed by the Covid-19 global pandemic for ensuring substantive gender equality and fundamental rights. While the Agenda respects countries' "policy space," gives legitimacy to state and judicial sovereignty allowing for national ownership, it poses accountability challenges for gender equality, women's and girls' rights in decision-making on the SDGs. It argues that the binary positioning of gender and green budgeting overlooks their interdependence and calls for a greater understanding of the commonalities among gender justice and economic and environmental justice. Revisiting SDG5 and the Agenda calls for rethinking the epistemological foundations of the gender equality paradigm and its implementation and greater reflexivity to unpack the governmentality of SDG5. The biopolitics of the pandemic provide impetus for transformative equality to unsettle injustices and address deep-rooted systemic, gender-based, and intersectional inequalities. Alertness to the unstable terrain of gender equality in the twenty-first century with its contests over different forms of power and rights is paramount.

Tripathi, S. "Human Rights and Gender Justice: The Global Initiatives." *WOMEN, GENDER & THE LAW eJOURNAL*, Vol. 18, No. 164: Aug 2, 2023.

There has been a long debate on gender justice and it is still it is one of the biggest human rights challenge. Gender justice can be simply understood with equality among the genders. Gender justice is a balance of economic, social, political, environmental, educational, cultural and various factors and these pre conditions have to be satisfied for achieving gender justice. Numerous struggles have been made for equal rights, freedom and justice by the human rights activists, NGOs, feminist, etc. In the perspective of human rights, women' rights have a greater portion and is also a sensitive issue. Women's rights have often been ignored by the male dominating society. This paper attempts to analyze human rights through gender perspective and focuses on the various International conventions and conferences made for women 's development and upliftment in the global village.

Sexual Orientation and Gender Identity

Ball, C. A. "First Amendment Exemptions for Some." *Harvard Law Review Forum*, Vol. 137, (2023, Forthcoming). *Rutgers Law School Research Paper*.

This Essay argues that the Supreme Court's assessment of what it understood to be the sincerity and reasonableness of the business owner's beliefs in 303 Creative LLC v. Elenis played a crucial role in its decision to grant her a First Amendment exemption from the application of a law prohibiting public accommodations from discriminating on the basis of sexual orientation. The Essay explains how 303 Creative is only the latest instance in which conservative justices have contended that opponents of marriage rights for same-sex couples

are "decent" and "fairminded people" who are not prejudiced against lesbians, gay men, and bisexuals. By leaving earlier Court precedents rejecting the notion that the First Amendment grants anti-discrimination exemptions to racist and other bigoted business owners firmly in place, 303 Creative makes clear that the sincerity and reasonableness of the claimant's views matter. This means that the impact of 303 Creative on the enforcement of civil rights laws may be more limited than some fear. But it also means that the ruling is grounded in precisely the type of governmental distinction on the basis of speakers' viewpoints that the Free Speech Clause prohibits.

[*] Belavusau, U. "Conversion Practices on LGBT+ People." *European Parliament*, 14-07-2023.

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), examines "conversion practices" (also called "conversion therapies") aimed at changing, repressing or suppressing the sexual orientation, gender identity or expression of LGBT+ persons. Such practices, due to their discriminatory, degrading, harmful and fraudulent nature, are being banned in a growing number of States, including EU Member States. The study analyses and compares selected national legislations before examining the possibilities to counter such practices at EU level, and makes recommendations.

Baghumyan, G. "Sexual-Orientation Discrimination and Biological Attributions: Experimental Evidence from Russia." *CERGE-EI Working Paper Series*, No. 762.

Understanding what drives discriminatory behavior is important in order to identify the best strategy to combat it. In this study, I exogenously manipulate participants' beliefs about the origins of sexual orientation by providing evidence that supports biological causes of homosexuality. I employ money allocation tasks to measure discrimination. This allows me to causally identify the impact of information on discriminatory behavior. I first document the prevalence of discrimination against individuals with same-sex partners in Russia. On average, roughly 54\% of participants exhibit discriminatory behavior against profiles with same-sex partners by allocating 16 percentage points less money to them. Further, the results suggest that exposure to evidence on the biological causes of homosexuality negatively affects discriminatory behavior. Participants in the treatment group allocate less money to profiles with same-sex partners, relative to participants in the baseline group. Potential rationales for this behavior could include the following: (i) the provision of information that contradicts existing beliefs might cause cognitive dissonance, triggering irritation and intensifying discriminatory tendencies; (ii) the information might foster beliefs that individuals in same-sex partnerships are fundamentally 'other' - even at a biological level - thereby widening the perceived social gap between participants and these sexual minority groups and fostering discrimination further.

Del Gobbo, D. "Queer Rights Talk: The Rhetoric of Equality Rights for LGBTQ Peoples." In: Rebecca J. Cook, ed., Frontiers of Gender Equality: Transnational Legal Perspectives, University of Pennsylvania Press, 2023.

Equality rights for LGBTQ+ peoples have a politically vexed relationship with substantive equality around the world. Critiques of the structural limitations and harmful, unintended consequences of rights claims have abounded in critical legal theory for decades. This chapter intervenes in these debates by mapping the structure and rhetoric of equality rights for LGBTQ+ peoples. Applying a legal analytical framework that originates in Eve Kosofsky Sedgwick's writing, the chapter focuses on the text of the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, released in 2007 and

supplemented in 2017. The rhetoric of the Yogyakarta Principles is trapped in what Sedgwick calls a "radical and irreducible incoherence" between conflicting conceptions of gender and sexuality that has constrained the mission of substantive equality worldwide, yet which may be fundamental to the praxis of rights claiming in the international human rights system. Equality rights talk is "queer" in this sense – irresolvable in theory, powerfully productive for LGBTQ+ peoples in certain legal contexts, and profoundly harmful to LGBTQ+ peoples and other equality-seeking groups in other legal contexts. Considering this fact, the chapter concludes by arguing that LGBTQ+ activists should think about how we might negotiate the conflicts of equality rights rhetoric more strategically and responsibly by operating, paradoxically, both within and without the constraints of international human rights system to promote gender and sexual diversity on the global stage.

[*]Lau, H. and Dyer, X. "Comparative Law and Freedom to Marry in Hong Kong." *Hong Kong Law Journal* 51, (2023).

Article 37 of Hong Kong's Basic Law (BL 37) enshrines the freedom to marry, stating: "The freedom of marriage of Hong Kong residents and their right to raise a family freely shall be protected by law." In the pending case of Sham Tsz Kit v Secretary for Justice, the Hong Kong Court of Final Appeal will determine whether BL 37 encompasses a right to same-sex marriage. The Court of First Instance and the Court of Appeal rejected the idea that BL 37 encompasses same-sex marriage, and they relied on comparative law to support their conclusions. This essay explains that the lower courts erred in citing cases from the European Court of Human Rights (ECtHR) and United Nations Human Rights Committee (HRC) as persuasive authority. The lower courts also erred in completely ignoring the Inter-American Court of Human Rights (IACtHR) even though the IACtHR's advisory opinion on same-sex marriage is especially germane. With Sham Tsz Kit now pending before it, the Court of Final Appeal has an opportunity to correct course by drawing insights and inspiration from the IACtHR instead of the ECtHR and HRC. The IACtHR's jurisprudence supports construing BL 37 to encompass same-sex marriage.

[*]Lau, H. and [*]Malagodi, M. "Legal Gender Recognition in Nepal and Comparative Context." 45 University of Pennsylvania Journal of International Law (forthcoming).

The Supreme Court of Nepal was a groundbreaker when it ruled in Pant v. Nepal (2007) that people have the right to change their gender on identity documents based on "self-feelings" and "self-determination" as opposed to medical or other criteria. At the time, no other national apex court or national government had so clearly prioritized self-determination as the guiding principle for resolving matters concerning gender identity. The decision in Pant, however, focused on people of "third gender," in other words people who identify as neither male nor female. Now, the Supreme Court of Nepal is considering the case of a transgender woman, Ms. Kapali, who is seeking to identify as female on her identity documents, not as "third gender" or "other." Ms. Kapali is challenging government authorities that have rejected her requests.

This Article analyzes Ms. Kapali's claim from the vantage point of comparative law. In the years since Pant was decided, a rapidly growing number of countries and supranational legal institutions have taken steps to protect individuals' self-determination of legal gender, including that of individuals who wish to change their legal gender from male to female or vice versa. We chart this trajectory of change around the world and explain that the trajectory is underpinned by compelling human rights principles. This analysis suggests that comparative law—along with Nepal's constitutional law and international obligations—strongly supports Ms. Kapali's claim to gender self-determination on identity documents. Numerous countries have surpassed Nepal in protecting

gender identity rights, but Ms. Kapali's case presents an opportunity for the Supreme Court to position Nepal once again among the world's leading jurisdictions on gender identity rights.

This Article helps to shape understandings about Ms. Kapali's case, and it provides context for analyzing the Supreme Court's forthcoming ruling. Although Ms. Kapali's case in Nepal is the impetus for this Article's comparative analysis, our discussion of comparative law is significant to other countries as well. Our article provides the most comprehensive study to date of gender self-determination laws around the world. It thus offers insights that are relevant not only to Nepal but also to other countries that are considering reforms to gender identification policies.

[*] **Katsuba, S. "Premeditated, Organized and Impactful: Dating Violence as a Method of Committing Hate Crimes Against LGBTQ People in Russia". J Fam Viol (2023).**

Purpose The purpose of the research is to identify and analyze the cases of dating violence among the hate crimes against LGBTQ people in Russia. Dating violence (attacks on LGBTQ people with the use of dating services) became a common method of committing hate crimes in Russia in the late 2010s and was enabled by the discriminatory policies of the state.

Method This research is part of a bigger project on anti-LGBTQ violence. The project generated a database of more than 1000 cases of such violence between 2010 and 2020 using court rulings as a primary source of data The current research is a continuation of this effort, it is looking into a specific category of hate crime – premeditated attacks in order to analyze the cases of dating violence.

Results The research established that most of the cases in the category of premeditated attacks are cases of dating violence (239 out of 347). Most of those crimes (209) are cases of collective violence (committed by different anti-LGBTQ hate groups). There is evidence of the community impact in the incidents and in the agendas of the hate groups.

Conclusions The research adds to the theoretical model of the progression of prejudice and argues that dating violence represents a more developed form of violence against LGBTQ people. This is due to the three distinguishing features (premeditation, collective form, and community impact) that are present in the cases.

[*] **Katsuba, S. "The Decade of Violence: A Comprehensive Analysis of Hate Crimes Against LGBTQ in Russia in the Era of the "Gay Propaganda Law" (2010–2020), Victims & Offenders (2023).**

The research builds on the previous findings on the number of hate crimes against LGBTQ in Russia before and after the introduction of the so-called "gay propaganda law" in 2013 and significantly enriches them. The previous research studied hate crimes between 2010 and 2016 and was limited to using 2 databases of court decisions. The current research expands both the timeframe and the use of sources: it analyzes such crimes across 11 years (2010–2020) while adding 2 new databases of court rulings to achieve more comprehensive results and generate more accurate statistics of violent acts against LGBTQ in Russia. The previous research identified 263 cases of hate crimes, which was not sufficient to generate accurate statistics and indicated a trend only. The results of the current research significantly expand the existing knowledge by identifying 1056 hate crimes committed against 853 individuals …

Socio-economic Inequality

[*] **Campbell, M. "Like Birds of a Feather?: ICESCR and Women's Socioeconomic Equality." In: Rebecca J. Cook, ed., Frontiers of Gender Equality: Transnational Legal Perspectives, University of Pennsylvania Press, 2023.**

This chapter evaluates the approach of the Committee on Economic, Social and Cultural Rights (CESCR) to monitoring women's socioeconomic rights under the International Covenant on Economic, Social and Cultural Rights (ICESCR). Initially, CESCR neglected women's rights, but it now addresses gender equality, though unevenly. Articles 2(2) and 3 of ICESCR obligate States to eliminate sex and gender discrimination and ensure equal rights for women and men. CESCR adopts CEDAW's definition of discrimination and endorses formal, substantive, and intersectional equality. It uses intersectionality to address recognition and redistribution harms for women with intersecting identities. CESCR focuses on three key areas: women's work rights, freedom from violence and sexual and reproductive health. It uses a multidimensional model of substantive equality to criticize intersecting inequalities and recommend reforms. However, CESCR gives limited attention to women's rights to food, water, housing, trade unions, science and culture, and international assistance. This inattention stereotypes "women's issues" and falls short of fully engendering ICESCR. CESCR's approach largely replicates the CEDAW Committee's work, resulting in gaps in socioeconomic rights. CEDAW is limited on trade unions, food/housing rights, and poverty. CESCR could shift focus to these overlooked rights, but this shift could risk fracturing women's equality across treaties and creating norm divergence. A coordinated approach could reduce gaps and duplication. CESCR could emphasize key recommendations from CEDAW while focusing on engendering neglected rights. A coordinated approach could pool resources and strengths to advance women's socioeconomic equality throughout the UN system. However, it risks fragmenting rights and hierarchies between treaties. Overall, reorienting CESCR's approach carries risks and rewards. A coordinated strategy between CESCR, CEDAW and other actors could maximize benefits while mitigating downsides.

Fish, E. "Equal Opportunity in an Unequal Society." Forthcoming in: Law and Economics of Justice: Efficiency, Reciprocity, Meritocracy. Mathis, K., Tor, A. (eds.). Springer.

Many share the view that even though gross inequalities of wealth are something to worry about, it makes a difference whether or not they are accompanied by substantive equality of opportunity. If people or their children are able to climb up and down the economic hierarchy, inequality is no longer deemed so objectionable. In this chapter I examine the soundness of this common view. I argue that against the backdrop of acute economic inequality, equal opportunity and mobility might be less morally significant than we often assume.

Science and Technology

Diaz, A. "Online Racialization and the Myth of Colorblind Content Policy." Forthcoming, *Boston University Law Review*, Vol. 103, 2023.

This Article presents a critical analysis of social media content moderation, arguing that colorblind policies obscure and legitimize systems of white supremacy. Through facially neutral content policies, social media

platforms conceal deliberate choices that align racial benefits and burdens with corporate interests. These choices connect the profitability of racism, the regulatory benefit of protecting politicians who trade in bigotry, and the racial biases that inform how platforms conceptualize the harms of online speech. The resulting content policies reinforce a hierarchical structure that upholds the dominant social, political, and economic advantages attendant to whiteness.

As the primary document governing millions of daily decisions regarding online speech, content policy has an unprecedented ability to shape global norms. Although social media companies purport to treat all groups equally, colorblind content policy protects white bigotry while suppressing anti-racist and anti-colonial resistance. Dominant racial groups are granted extensive latitude of expression, encompassing everything from racial dog-whistles to explicitly racist harassment campaigns. Under the guise of humor or political debate, social media companies foster white vigilantism and authoritarian incitement. In contrast, communities of color are policed as dangerous, violent, and uncivilized. Colorblind hate speech rules restrict the ability of marginalized groups to explicitly denounce white racism, while racialized enforcement of violent extremism policy broadly suppresses political debate and sacrifices everything from satire to journalism in the name of public safety.

Understanding the asymmetry inherent in content moderation requires an engagement with the history and logics of racism. The illusion of colorblind content policy reinforces racial hierarchies by making them appear natural and inevitable. This article challenges the discriminatory structure of colorblind content policy and advocates for an alternate approach that incorporates the race-conscious moderation necessary to foster full participation in modern society.

Duncan, P. and Jenkins R. "A Machine Learning Evaluation Framework for Place-based Algorithmic Patrol Management." *Discrimination, law & Justice Ejournal* 24, no. 259 (2023).

American law enforcement agencies are increasingly adopting data-driven technologies to combat crime, with the market for such technologies projected to grow significantly in the coming years. One prevalent approach, place-based algorithmic patrol management (PAPM), analyzes data on past crimes to optimize police patrols. These systems promise several benefits, including efficient resource allocation, reduced bias, and increased transparency. However, the adoption of these technologies has raised ethical and social concerns, particularly around privacy, bias, and community impact. This report aims to provide a comprehensive framework, including many concrete recommendations, for the ethical and responsible development and deployment of PAPM systems. Targeting developers, law enforcement agencies, policymakers, and community advocates, the recommendations emphasize collaboration among these stakeholders to address the complex challenges presented by PAPM. We suggest that failure to meet the proposed ethical guidelines might make the use of such technologies unacceptable. This report has been supported by National Science Foundation awards #1917707 and #1917712 and the Center for Advancing Safety of Machine Intelligence (CASMI).

Eaglin, J. "Racializing Algorithms." *California Law Review* 111, no. 753 (2022).

There is widespread recognition that algorithms in criminal law's administration can impose negative racial and social effects. Scholars tend to offer two ways to address this concern through law—tinkering around the tools or abolishing the tools through law and policy. This Article contends that these paradigmatic interventions,

though they may center racial disparities, legitimate the way race functions to structure society through the intersection of technology and law. In adopting a theoretical lens centered on racism and the law, it reveals deeply embedded social assumptions about race that propel algorithms as criminal legal reform in response to mass incarceration. It further explains how these same assumptions normalize the socially and historically contingent process of producing race and racial hierarchy in society through law. Normatively, this Article rejects the notion that tinkering around or facilitating the abolition of algorithms present the only viable solutions in law. Rather, it calls upon legal scholars to consider directly how to use the law to challenge the production of racial hierarchy at the intersection of technology and society. This Article proposes shifting the legal discourse on algorithms as criminal legal reform to critically center racism as an important step in this larger project moving forward.

[*] **Krupiy, T. and Scheinin M. "Disability Discrimination in the Digital Realm: How the ICRPD Applies to Artificial Intelligence Decision-Making Processes and Helps in Determining the State of International Human Rights Law." Human Rights Law Review 23, no. 3 (2023).**

Scholars have identified challenges to protecting individuals from discrimination in contexts where organisations deploy artificial intelligence decision-making processes. While scholarship on 'digital discrimination' is growing, scholars have paid less attention to the impact of the use of artificial intelligence decision-making processes on persons with disabilities. This article posits that while the use of artificial intelligence technology can be beneficial for some purposes, its deployment can also construct a disability. The article demonstrates that the Convention on the Rights of Persons with Disabilities can be interpreted in a manner that confers a wide variety of human rights on persons with disabilities in the context when entities deploy artificial intelligence decision-making processes. The article proposes a test for digital discrimination based on disability and shows how it can be incorporated into the treaty through legal interpretation. Thereafter, it moves to developing an analogous general test for digital discrimination under international human rights law, applicable beyond a catalogue of protected characteristics.

[*] **Lütz, F. "Algorithmische Entscheidungsfindung aus der Gleichstellungsperspektive – ein Balanceakt zwischen Gender Data Gap, Gender Bias, Machine Bias und Regulierung." *GENDER – Zeitschrift für Geschlecht, Kultur und Gesellschaft*, 1-2023, S. 26-41.**

The article analyses to what extent algorithms enable or hinder the achievement of gender equality goals, especially considering the phenomena of gender bias, machine bias and the gender data gap. The, mostly negative, consequences for gender equality will be explained drawing on the example of recruitment algorithms. However, it will also be shown to what extent algorithms could be used specifically to achieve gender equality, for instance by using algorithms in positive action measures and to detect discrimination.

[*] **Lütz, F. "Gender Equality and Artificial Intelligence: SDG 5 and the Role of the UN in Fighting Stereotypes, Biases, and Gender Discrimination." In: Fornalé, E., Cristani, F. (eds) Women's Empowerment and Its Limits. Palgrave Macmillan, Cham, 2023.**

Gender inequalities and discrimination are a global problem affecting all countries of the United Nations (UN). Since the rise of digital technologies, such as artificial intelligence (AI) and algorithms, new challenges have arisen for achieving gender equality. While some argue that digital technologies could be an opportunity to overcome some of the gender inequalities, many warn of the new dangers associated with the use of AI and

algorithms, particularly for disadvantaged groups of society suffering from inequalities in their daily life since centuries ago. To assess the UN's role of preserving gender equality in the age of algorithms, this chapter is framed by the Sustainable Development Goals (SDG), especially SDG 5, and includes a brief overview of the broader policy and institutional framework of the UN. It is argued here that an adequate legal and policy framework with a clear gender dimension at global level is needed and that it could be achieved by involving the main gender equality actors of the UN system. Drawing on the available literature and policy proposals, the last section will sketch out some of the elements of a forward-looking, sustainable, and antifragile UN framework that could be used to address the challenges of AI for gender equality.

[*] Lütz, F. La technologie, l'humain et le droit: Le rôle du droit pour contrer la discrimination algorithmique dans le recrutement automatisé." dans Guillaume Florence (eds.),(Conférences CUSO), Stämpfli Verlag, 2023.

Les nouvelles technologies ont modifié en profondeur notre environnement et entraîné des bouleversements majeurs dans notre mode de vie. C'est dire l'importance d'élaborer des règles de droit qui soient adaptées aux enjeux de la société 4.0. Cet ouvrage regroupe les contributions de doctorants en droit qui se sont intéressés à cette thématique au cours d'un séminaire organisé à Neuchâtel par la CUSO. L'analyse de la place de l'humain dans une société dont les contours sont définis par le droit et par la technologie amène à questionner le rôle de l'État dans la définition des règles applicables aux nouvelles technologies comme l'intelligence artificielle et la blockchain, ainsi qu'à s'interroger sur l'influence des acteurs privés dans la régulation de nos activités en ligne. Les contributions traitent de domaines variés tels que les réseaux sociaux, la protection des données, la responsabilité et la cybercriminalité.

[*] Muntarbhorn, V. "Microverse, Mezzoverse, Macroverse: Protection Against Discrimination in an Artificialised World?" *Asian-Pacific Journal on Human Rights and the Law* 24, no. 2 (2023): 186–197.

The article addresses the issue of protection against discrimination in an artificialised world, shaped by automation, algorithms and artificial intelligence (ai) and interlinked with digitalisation. While traditionally advocacy against discrimination was based mainly on the call for specific anti-discrimination laws coupled with other actions, there is a more recent entry point in the form of personal data protection laws. These can help to safeguard privacy in relation to personal data which adds to protection against discrimination. However, the right to privacy and the right to freedom of expression (covering data flows) must be balanced well in the process, and the article refers to recent experiences from various regions. The contribution of different stakeholders is essential. Options include regulation by the State, self-regulation by the business sector, co-regulation between a mix of governmental and business-related cooperation, due diligence measures, technical solutions, consumer-based initiatives, specific attention to vulnerabilities, checks and balances against abuse of power, and demonopolisation.

[*] Quintavalla, A. and [*] Temperman, J. "Artificial Intelligence and Human Rights." *Oxford University Press,* (2023)

The scope of Artificial Intelligence's (AI) hold on modern life is only just beginning to be fully understood. Academics, professionals, policymakers, and legislators are analysing the effects of AI in the legal realm, notably in human rights work. Artificial Intelligence technologies and modern human rights have lived parallel lives for the last sixty years, and they continue to evolve with one another as both fields take shape.

Human Rights and Artificial Intelligence explores the effects of AI on both the concept of human rights and on specific topics, including civil and political rights, privacy, non-discrimination, fair procedure, and asylum. Second- and third-generation human rights are also addressed. By mapping this relationship, the book clarifies the benefits and risks for human rights as new AI applications are designed and deployed.

Its granular perspective makes Human Rights and Artificial Intelligence a seminal text on the legal ramifications of machine learning. This expansive volume will be useful to academics and professionals navigating the complex relationship between AI and human rights.

Sexual and Gender Violence

[*] **Neves Abade, D. and Rodrigues Freitas, J. "Political violence against women in the international and domestic system: a conventional and constitutional analysis of the electoral crime." *Revista Direito Mackenzie* 17, no. 1 (2023).**

The article aims to analyze and define the crime of gender political violence, taking into account the Cooperative Constitutional State approach and the radiating effect of human rights, evaluating the challenges in applying the existing normative related to gender political violence and how it can be interpreted to better protect victims. The method chosen was bibliographic and documentary content analysis and interpretation of the data to identify relevant patterns and themes. In conclusion, the hypothesis that authorities in charge of enforcing gender-political violence laws should consider human rights protection and accountability of perpetrators as key objectives were confirmed. This should happen by integrating international human rights principles into legislation to ensure that laws are consistent with international norms, in a performance that assumes the importance of cooperation between state agencies and civil society in the protection of these rights.

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